

KEYWORD: Guideline f

DIGEST: Applicant relies on new evidence which the Board cannot consider. Adverse decision affirmed.

CASENO: 13-00137.a1

DATE: 04/04/2014

DATE: April 4, 2014

In Re:	)	
	)	
-----	)	ISCR Case No. 13-00137
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On July 2, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended)

(Directive). Applicant requested a decision on the written record. On January 24, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge James F. Duffy denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline E and for one of the Guideline F allegations are not at issue in this appeal. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Applicant has worked for his current employer, a Federal contractor, since April 2012. He has held a security clearance in the past.

The SOR alleged two delinquent debts, one of which the Judge resolved adversely to Applicant. This was for a loan that Applicant had obtained in 2006 in order to pay for rent and food during a period of unemployment. While working in support of U.S. military objectives overseas Applicant lost contact with the creditor. However, he stated that he recently entered into a repayment agreement whereby he would make four payments of \$3,095 a month for four months. He made one such payment but made no others, due to a reduction in income and payment of college loans for his children. He stated that the creditor agreed to accept a lump sum payment of \$6,300 and that he would make this payment in December 2013. He did not provide proof of this arrangement or of any payment made thereunder. In 2010, a central adjudication facility (CAF) granted Applicant a security clearance conditioned on resolving this debt.<sup>1</sup> In 2012, this CAF suspended Applicant's access to sensitive compartmented information (SCI) due to his failure to have done so.

### **The Judge's Analysis**

The Judge cited to evidence that Applicant's financial condition was affected by circumstances outside his control, such as unemployment. However, the Judge concluded that Applicant had not demonstrated responsible action in regard to the delinquent loan discussed above. He stated that Applicant had not presented evidence of financial counseling. Moreover, the Judge noted evidence that Applicant had been on notice of the security significance of this debt since 2010, but he did not address it despite having the financial means to do so. In the whole-person analysis the Judge acknowledged evidence that Applicant had performed duties in support of U.S. military objectives overseas. He stated, however, that Applicant's failure to address the debt at issue here left him with doubts about Applicant's suitability for a clearance.

### **Discussion**

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<sup>1</sup>DOHA does not have authority to issue a conditional clearance. *See, e.g.*, ISCR Case No. 11-02441 at 3 (App. Bd. Feb. 15, 2013). Applicant's conditional clearance was granted by another agency.

Applicant cites to his statement about an agreement to resolve his remaining debt with a lump sum payment. In doing so, he provides evidence not contained in the record, which we cannot consider. Directive ¶ E3.1.29. *See* ISCR Case No. 12-00703 at 2 (App. Bd. Feb. 27, 2014). He argues that the record supports a conclusion that he has made plans to resolve the debt. The Judge’s finding that Applicant did not corroborate the terms of a repayment agreement is not undermined by Applicant’s appeal argument. Moreover, the Judge’s finding that Applicant neglected to address this debt when granted a conditional clearance in 2010 supports his conclusion that Applicant failed to demonstrate responsible action in regard to his financial situation.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

**Order**

The Decision is AFFIRMED.

Signed: Michael Y. Ra’anan  
Michael Y. Ra’anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board