

KEYWORD: Guideline F

DIGEST: DOHA personnel provided Applicant with sufficient information about his right to present evidence. Applicant has suffered no due process violation. The Judge did not err in concluding that Applicant’s debts raised security concerns. His having previously lost a clearance due to bad debt should have placed him on notice of the possible impact financial problems can have on clearance eligibility. We cannot consider new evidence on appeal. A Judge has no authority to serve as an investigator. The impact that an unfavorable decision might have on an applicant is not relevant. Adverse decision affirmed.

CASE NO: 14-00434.a1

DATE: 01/20/2015

DATE: January 20, 2015

In Re:)	
)	
-----)	ISCR Case No. 14-00434
)	
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 March 21, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On October 31, 2014, after considering the record, Defense Office of

Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether Applicant was denied due process; whether the Judge erred in concluding that his circumstances raised security concerns; and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant works as a consultant for a Defense contractor. He previously served in the U.S. military, from which he retired. He held a clearance from 1991 until 2007, at which point it was revoked due to financial issues caused by his ex-wife's spending.

Applicant's SOR alleges numerous delinquent debts, including a debt to the IRS, a failure to file his Federal tax return, utility services, cable services, consumer debts, etc. In his clearance interview, Applicant stated that he intended to pay his delinquent debts, stating that he was able to meet all of his financial obligations. He attributed his current problems to his domestic partner's decrease in pay. In his Answer to the SOR he stated that he would pay most of his debts within two to six months. He provided no character references or evidence as to the quality of his job performance.

The Judge's Analysis

The Judge concluded that Applicant's delinquent debts, accumulated between 2007 and 2013, along with his failure to file his Federal tax return, raised concerns under Guideline F. In concluding that Applicant had failed to mitigate these concerns, the Judge cited to evidence that he had previously been denied a clearance for financial delinquencies. He also concluded that Applicant had failed to demonstrate responsible action in regard to his debts. The Judge noted that Applicant's problems were affected by his partner's loss of pay; however, he stated that there is no evidence that he had addressed even his smallest debts.

Discussion

Applicant asserts that he was denied due process. He states that he was not aware that he had to send in evidence to show debt payment. We note that the memorandum from Department Counsel that accompanied the File of Relevant Material (FORM) advised Applicant of his right "to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation" regarding the information contained therein. In addition, the FORM was accompanied by a letter from a DOHA official advising him of his right "to submit any material you wish the Administrative Judge to consider." DOHA also provided Applicant with a copy of the Directive, which contains a description of his right to submit evidence. We conclude that the information that DOHA personnel provided to Applicant was sufficient to apprise a reasonable person of the extent

of his right to present evidence. We find no reason to believe that Applicant was denied the due process afforded by the Directive. *See, e.g.* ISCR Case No. 12-02296 at 3 (App. Bd. Mar. 12, 2014).

Applicant contends that his circumstances do not raise concerns under Guideline F. He asserts that he is “not in dire need for money,” and that he is not being pursued by creditors. The gist of his argument appears to be that he will not engage in illegal activity in order to pay his debts. We have previously said, however, that the concern under Guideline F is not simply that a person’s financial problems may tempt him or her to commit crimes. The Guideline also states that failure to satisfy debts

may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Directive, Enclosure 2 ¶ 18. *See* ISCR Case No. 10-00925 at 2 (App. Bd. Jun. 26, 2012).

In the case before us, the evidence shows that Applicant had previously lost a clearance due to financial problems, which was sufficient to have placed him on notice of the possible impact of delinquent debt on his clearance eligibility. Nevertheless, since that time he amassed additional debt, which had not been resolved as of the close of the record. This evidence was sufficient to raise a concern that Applicant may be lacking in the judgment and reliability expected of persons with access to classified information. The Judge did not err in concluding that Applicant’s circumstances raised security concerns.

Applicant cites to his Answer to the SOR, which states that he had filed his 2012 tax return and that he had paid down his tax debt. The Judge made findings about this evidence. Applicant’s argument is not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-10255 at 4 (App. Bd. Jul. 28, 2014). Applicant’s brief asserts matters from outside the record concerning his effort at debt repayment. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant contends that the Judge erred by not contacting his creditors regarding the extent to which he had addressed his debts. A Judge has no authority to serve as an investigator in a DOHA case. *See, e.g.*, ISCR Case No. 11-03500 at 3 (App. Bd. Feb. 28, 2012) (“Any attempt by a Judge independently to investigate allegations would conflict with his or her role as an impartial fact-finder”). When the Government produces evidence of security concern, it is the applicant’s responsibility to present evidence in mitigation. The applicant bears the burden of persuasion. *See* Directive ¶ E3.1.15. If Applicant had additional evidence that he believed relevant to his case, it was his duty to provide it. However, despite Department Counsel having opined in the FORM that the record as it then stood was not sufficient to mitigate Applicant’s concerns, he submitted nothing in response. Accordingly, the Judge’s decision was consistent with the record that was before him.

Applicant cites to his job loss, resulting from the denial of his clearance. The impact that an unfavorable decision may have on an applicant is not a relevant or material consideration in

evaluating his or her security eligibility. *See* ISCR Case No. 11-13180 at 3 (App. Bd. Aug. 21, 2013).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. Applicant's presentation consists of promises of future debt payment, which is not a substitute for a demonstrated track record of debt resolution. *See, e.g.*, ISCR Case No. 09-02926 at 2 (App. Bd. May 11, 2014). "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 Ra'anan

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board