

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant availed himself of the opportunity to respond to the government's case. If he believed there was additional information to present it was his responsibility to submit it. Adverse decision affirmed.

CASENO: 14-01925.a1

DATE: 06/26/2015

DATE: June 26, 2015

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In Re: )	
)	
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)	
)	
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 October 2, 2014, 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 April 15, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Erin C. Hogan 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 are not at issue in this appeal. Consistent with the following, we affirm.

### **The Judge’s Finding of Fact**

Applicant is an employee of a Defense contractor. He served in the military from November 1976 until May 1985, leaving with an Honorable Discharge. Married in 2011, Applicant has two prior marriages.

Applicant’s SOR lists numerous delinquent debts, totaling \$96,642. These debts are for such things as vehicle loans, credit cards, telephone services, a time share, parking tickets, etc. Applicant experienced unemployment from May 2009 until April 2010 as a consequence of a reduction in force. He had filed for Chapter 13 bankruptcy protection earlier in 2009, when he was divorcing his wife. However, this did not prevent his home from going into foreclosure. He did not go through with the bankruptcy.

Applicant’s current wife retired last year due to medical problems, resulting in a diminution of income. However, Applicant has recently been promoted, with a substantial increase in pay. He now makes an amount sufficient to enable him to work with creditors in resolving his debts.

Applicant has identified several matters in his credit history that he believes are inaccurate. He states that he has been a victim of identity theft and that the parking tickets were incurred by someone who had purchased his car but had not transferred the title. His contention that these tickets have been removed from his credit report was not corroborated.

Applicant sent several letters to creditors disputing certain debts. Some of the debts Applicant disputes were listed in his Chapter 13 bankruptcy petition. The Judge found that Applicant owed these debts.

Applicant enjoys as good reputation for the quality of his duty performance, as we well as for his observance of various ethical rules and security regulations. Applicant’s supervisor recommends him for a clearance.

### **The Judge’s Analysis**

The Judge cleared Applicant of the Guideline E allegation. She reached an opposite conclusion under Guideline F, however, citing to evidence that some of the debts Applicant now disputes were listed in his bankruptcy petition as legitimate. She stated that this raises doubts about Applicant's reliability. She also noted that Applicant provided no corroboration for his claim to have resolved some of the SOR debts. Though acknowledging that Applicant's financial condition was affected by circumstances outside his control, she stated that he currently makes enough to undertake debt resolution. However, she stated, he has ignored his financial problems.

She found that there is no evidence of financial counseling and that his efforts to address his debts have been undertaken at the last minute, probably in response to the SOR. She also noted that he has not corroborated his claim to have paid some of his debts.

In the whole-person analysis, the Judge noted Applicant's service in the military and his favorable employment history. She also addressed once again those features of his financial history that were outside his control. However, she stated that Applicant has had several years to begin resolving his debts and yet did not attempt to do so until the last minute.

## **Discussion**

Applicant argues that the Judge based her decision on evidence that was no longer current and that she failed to consider "updated information" in evaluating the case. In presenting this argument, he includes matters from outside the record, which we cannot consider. Directive ¶ E3.1.29.

We note first of all that Applicant admitted all of the allegations in the SOR, without qualification. Therefore, these allegations were not controverted, relieving the Government of its burden of producing evidence of security concern. *See* Directive ¶ E3.1.14. In any event, Department Counsel sent Applicant a copy of the File of Relevant Material (FORM), which included information about his opportunity to respond. Applicant also received a letter from DOHA accompanying the FORM that advised him of his right to provide additional information for the Judge's consideration. Applicant did respond to the FORM in March 2015 with documents that addressed his debt problems. If he believed that additional, more up to date, information was available, it was his responsibility to provide it within the allotted period of time.

To the extent that Applicant's argument assumes that the Judge had an independent duty to obtain more recent information than that contained in the FORM, his argument fails. A Judge has no authority to serve as an investigator, which would be inconsistent with the Judge's duty to serve as an impartial fact finder. *See, e.g.*, ISCR Case No. 11-07346 at 3 (App. Bd. Feb. 13, 2013). The Directive places the burden on an applicant to present evidence in mitigation of the concerns arising from the SOR allegation. Directive ¶ E3.1.15. A Judge must decide the case on the basis of the record before her or him. Absent a reason to believe that an applicant was denied an opportunity to present witnesses or evidence, we are not permitted to remand a case for the purpose of taking in new evidence, nor, as stated above, may we consider new evidence ourselves in resolving an appeal. *See, e.g.*, ISCR Case No. 14-00976 at 3 (App. Bd. Feb. 5, 2015). In this case, Applicant

received sufficient notice about his right to provide evidence in mitigation. Accordingly, Applicant's argument is not sufficient to undermine the Judge's findings and conclusions. In any event, given the Judge's sustainable reliance on the recency of Applicant's efforts at debt resolution, it is unlikely that a more recent credit report or other such evidence would have made a difference in her overall decision.

Applicant cites to his belief that he has been the victim of identity theft and other things relevant to his circumstances. The Judge made findings that reflect her awareness of this theory. His argument is not enough to show that the Judge failed to consider all of the evidence in the record or that she mis-weighted the evidence. *See, e.g.*, ISCR Case No. 12-01755 at 3 (App. Bd. Apr. 10, 2015).

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 Ra'anan  
Michael 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