

KEYWORD: Guideline F

DIGEST: Applicant failed to make a *prima facie* showing that she submitted documents that were not included in the record. Applicant did not rebut the presumption that the Judge considered all of the evidence in the record. Adverse decision affirmed.

CASE NO: 14-02362.a1

DATE: 06/21/2016

DATE: June 21, 2016

)	
In Re:)	
)	
-----)	ISCR Case No. 14-02362
)	
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 14, 2015, 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 March 30, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Martin H. Mogul denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30

In the appeal brief, Applicant requests her case be remanded to the Judge so that he could consider all of the documents that she submitted. She stated that it appears from reading the Judge’s decision that documents she submitted never made it to him for his consideration. We construe her

request as raising a due process issue because documents she submitted were missing from the record.

We have examined Applicant's contention in light of the record as a whole. The Judge found in favor of Applicant on ten of the alleged debts and against her on nine on them. Regarding a debt of over \$13,000 (SOR ¶ 1.g) for which the Judge found against her, she argues that she provided documentation showing the debt was included in a class action lawsuit. The record does contain a court document concerning a proposed settlement in the class action lawsuit. Under the proposed settlement, the creditor would waive an outstanding balance on an applicable loan and report to the credit reporting bureaus the loan balance was zero and should be marked as "paid as agreed." The court document reflected that a hearing was scheduled for August 2015 to decide whether the proposed settlement should be approved. The hearing date for the proposed settlement, however, was almost two weeks after she submitted her Response to the FORM. Under these facts, we conclude that Applicant has not made a *prima facie* showing that she submitted more documents regarding the debt in SOR ¶ 1.g than those contained in the record.¹ Furthermore, Applicant has not rebutted the presumption that the Judge considered all the evidence in the record even though he did not discuss the court document in his findings regarding the debt in SOR ¶ 1.g. *See, e.g.*, ISCR Case No. 14-06093 at 3 (App. Bd. Dec. 4, 2015).

Applicant also argues she provided bank statements and paperwork from creditors showing that she paid three debts (SOR ¶¶ 1.p, 1.q, and 1.r) for which the Judge found against her, and they were apparently deleted from her credit report. The record contains a credit report that Applicant submitted with a notation that it was being submitted for the debts in SOR ¶¶ 1.p, 1.q, 1.r, and other debts. In her Answer to the SOR, she also stated that she provided documents from creditors showing the debts in SOR ¶¶ 1.p, 1.q, and 1.r were paid. The Judge, however, found that he could not locate any documents in the record supporting Applicant's claim that she paid those debts. The total amount of the debts in SOR ¶¶ 1.p, 1.q, and 1.r was about \$440, which is less than 3% of the total amount of the remaining unresolved debts. Given the small dollar amount of the debts in question, it is likely that the Judge would have rendered the same decision even if the documents that are allegedly missing had been contained in the record. Therefore, any error that may have occurred in the handling of the documents that are allegedly missing was harmless. *See, e.g.*, ISCR Case No. 14-03601 at 3 (App. Bd. Jul. 1, 2015).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. Applicant has not identified any harmful error likely to change the outcome of the case. 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."

¹ Applicant claimed the court document stated the debt in SOR ¶ 1.g was cleared and paid in full, which was not accurate.

Order

The case 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 F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board