

KEYWORD: Guideline F

DIGEST: Most of the document Applicant submitted on appeal were not previously submitted to the Judge and the Board is prohibited from receiving or considering them. Adverse decision affirmed.

CASENO: 12-01601.a1

DATE: 09/23/2016

DATE: September 23, 2016

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In Re:)	
)	
-----)	ISCR Case No. 12-01601
)	
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 August 19, 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 June 27, 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.

Applicant raised the following issues on appeal: whether the Judge erred in making findings of fact and whether the Judge’s decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant is 46 years old, married, and has four children. He earned a bachelor’s degree in 1994. Since 2010, he has been employed by a defense contractor. In his security clearance application, he explained that he encountered difficulty paying bills in 2008 after being laid off from a second job due to the company’s bankruptcy. He gave no explanation for why he did not begin attempting to resolve the debts until the issuance of the SOR.

Applicant admitted each of the five delinquent debts alleged in the SOR. For the debt in SOR ¶ 1.a for about \$500, Applicant wrote in his Response to Department Counsel’s File of Relevant Material (FORM) that the debt was paid off. The creditor agreed to accept three monthly payments of about \$100 to settle the debt. A document showed the creditor made arrangements with Applicant to debit electronically about \$100 from his account in September 2015 for this debt. For the 2009 judgment in SOR ¶ 1.b for about \$14,000, Applicant indicated that, at the time he answered the SOR, he was unable to negotiate a settlement. In his Response to the FORM, he provided documents showing his wages were being garnished biweekly for the next six months for this debt and about \$350 was garnished from his pay at the end of November 2015. No evidence was presented to establish the total amount deducted from his pay or how much is still owed on that debt. For the debts in SOR ¶¶ 1.c, 1.b, and 1.c for about \$2,500, \$5,600, and \$3600, Applicant wrote in his Response to the FORM that he is currently on a schedule to repay between \$150 and \$190 a month on each debt until it is resolved. He provided proof of payments toward those debts from September through November 2015.

The Judge’s Analysis

The Judge found Applicant did not act responsibly because, even though he has been employed by his current employer since 2010, he only began making payments towards the debts after the SOR was issued. The Judge also concluded that, while the mitigation condition concerning the initiation of a good-faith effort to repay the creditors was applicable, it was not controlling because Applicant must establish a consistent history of continuing to resolve his debts.

Discussion

In the appeal brief, Applicant provided character reference letters and documents showing payments on, or settlement of, various debts. Most of those documents, however, were not previously submitted to the Judge and constitute new evidence that the Appeal Board is prohibited from receiving or considering. Directive ¶ E3.1.29.

Applicant claims the Judge erred in the findings of fact. For example, he states that he has six children (instead of four) and started working for his current employer in 2012 (instead of 2010). In his security clearance application, however, Applicant listed that he had four children and indicated he started working for his employer in 2010. He failed to establish that the Judge erred in the findings of fact. Our review reveals the Judge’s material findings are based upon substantial evidence or constitute reasonable inferences or conclusions that could be drawn from the record evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. July 25, 2014). Applicant also argues that he mitigated the security concerns arising from his debts. His arguments are not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06634 at 2 (App. Bd. Apr. 28, 2016).

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

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board