

KEYWORD: Guideline F

DIGEST: Applicant has not rebutted the presumption that the Judge considered all the evidence.  
Adverse decision affirmed

CASENO: 12-01977.a1

DATE: 12/30/2013

DATE: December 30, 2013

In Re:	)	
	)	
-----	)	ISCR Case No. 12-01977
	)	
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 June 4, 2013, 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 29, 2013, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Joan Caton Anthony 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. Consistent with the following, we affirm.

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

Applicant served with the U.S. military for 20 years, retiring in 1993. He is presently employed by a Government contractor and is seeking a security clearance in connection with his job.

Of the six delinquent debts alleged in the SOR, the Judge resolved three against Applicant.<sup>1</sup> These three were for collection or charged-off accounts. He told the investigator that his wife had managed the family finances and, in 2010, she spent more than the couple earned. She contacted a debt repayment firm and entered into a contract with them to resolve the couple's financial problems. Applicant told the investigator that he was not aware of the status of the debts being resolved by this plan. He did provide corroboration for his claim to be participating in such a plan, along with documents showing cleared payments to the firm. Applicant and his wife have a total net monthly income of \$6,727, although their debt and expense payments exceed their income by \$671. They have real estate assets of \$225,000, a savings account worth \$8,000, cars and boats worth \$25,000, and savings of \$101,000 in a 401(k) account.

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

The Judge concluded that Applicant's financial situation raised concerns under Guideline F. As stated above, she resolved three of the allegations in Applicant's favor. In explaining why she concluded that Applicant had failed to mitigate the remaining debts, she cited to evidence that they are unresolved, as well as to the absence of financial counseling. The Judge stated that Applicant's negative income to expenditure ratio demonstrated a lack of responsibility and that Applicant had failed to demonstrate that he has the resources to make consistent payments on his delinquent debts. Although the Judge noted evidence of circumstances outside Applicant's control that affected his financial problems (tenants unable to pay rent, loss of overtime opportunities, and a son's loss of employment, which impaired the son's ability to assist in mortgage payments), she concluded that his circumstances overall did not demonstrate responsible action in regard to his debts.

### **Discussion**

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<sup>1</sup>The Judge resolved three allegations of delinquent debts, along with another citing to a 2004 discharge in Chapter 13 bankruptcy, in Applicant's favor.

Applicant has attached evidence to his brief, some of which was included in the record, for example documents pertaining to the contract with the debt repayment company. He argues that he is current on the debts that formed the basis of the Judge's adverse decision. To the extent that Applicant is contending that the Judge either failed to consider this evidence or failed properly to weigh it, we resolve these issues adversely to Applicant. The Judge made findings about the debt repayment plan and discussed the evidence in the Analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-08831 at 3 (App. Bd. Nov. 6, 2013). Moreover, a disagreement with a Judge's weighing of the evidence or the ability to argue for an alternative interpretation of the evidence is not sufficient to demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 11-13626 at 3 (App. Bd. Nov. 7, 2013).

Some of the evidence Applicant has cited was not contained in the record, for example a statement by his son regarding the amount he contributed to the mortgage. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

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: Jeffrey D. Billett

Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board