

KEYWORD: Guideline F

DIGEST: Applicant received reasonable notice of her right to submit evidence in response to the File of Relevant Material. The Judge’s material findings are supported by substantial evidence. The Board cannot consider new evidence on appeal. Adverse decision affirmed.

CASE NO: 12-02371.a1

DATE: 06/30/2014

DATE: June 30, 2014

In Re:)	
)	
-----)	ISCR Case No. 12-02371
)	
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 July 16, 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 April 14, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam 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 she was denied due process; whether the Judge's findings contained errors; 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

The Judge found that Applicant had delinquent debts totaling about \$26,000. These debts ranged from \$86 to nearly \$8,000. None of these debts have been paid or resolved. Applicant submitted no evidence that she had contacted any of her creditors, sought the assistance of a debt consolidation company, or disputed any of her debts.

Applicant's annual salary is over \$45,000. She has a net monthly income of \$3,751. After expenses and payment of ongoing debts, including a mortgage and car loan, she has a surplus of \$63. She presented no evidence of financial counseling.

Applicant provided no evidence of the quality of her job performance, her duties, or her history of compliance with security procedures. She submitted no character references.

Applicant was unemployed from July 2004 to April 2005, as a consequence of which she became unable to pay her debts. She stopped paying them because she had no money. She stated that she would review her credit report to see if any of the debts were not hers. She also stated that she bought a house in 2007 and, after moving in, realized that she could not continue to pay all of her debts. Her credit card balances increased, and she stopped paying old debts.

The Judge's Analysis

In evaluating Applicant's case for mitigation, the Judge stated that Applicant had failed to provide evidence that she was resolving her debts or otherwise addressing her problems. Applicant presented no evidence that she had made an effort to pay her debts or dispute any of them. In the whole-person analysis, the Judge stated that Applicant had been on notice since a January 2012 clearance interview that her debts could result in adverse consequences to her. Even after she received the SOR and a copy of the File of Relevant Material (FORM) she took no action to resolve any of her debts. Moreover, she provided no response to the FORM. The Judge concluded that Applicant had not met her burden of persuasion as to mitigation.

Discussion

Applicant states that she did not provide proof of debt payment because she was not advised that she should do so. We construe this as an argument that she was not apprised of her responsibilities to respond to the FORM, thereby denying her due process.

In the FORM, Department Counsel notes Applicant's claim that she had experienced unemployment in the past. He goes on to say that there "is no **documentary** evidence of any

payments or steps taken to resolve any of the 15 alleged delinquent debts . . .” (emphasis in original) Department Counsel also stated the following:

There is no evidence of efforts by [Applicant] to contact creditors, establish payment arrangements, and make payments. In fact, in her Answer to the Statement of Reasons, [Applicant] reveals no intent to repay any of these creditors . . . No clear explanation [has] been provided as to the origin of [Applicant’s] financial delinquencies. She has not provided any evidence of credit counseling or steps to reduce her monthly expenses. There is no evidence of any contacts with creditors or efforts to repay her delinquent debts. [Applicant] bears the burden to demonstrate that her financial indebtedness does not reflect poorly on her responsibility and judgment and that she is taking significant steps toward resolution . . .

In summing up the Government’s position, Department Counsel asserted that

[Applicant] has not yet provided documentation demonstrating that she is taking significant steps to resolve the 15 alleged delinquent debts, nor provided any explanation as to how the indebtedness occurred. There is no evidence that [Applicant] has taken steps to reduce her expenses or repay her delinquent debts. [Applicant] bears the burden of production and the burden of persuasion in mitigation.

Department Counsel concluded by stating that Applicant had an opportunity to submit documentary information within thirty days of receipt of the FORM. Department Counsel’s guidance was clear and detailed as to the paucity of mitigating evidence regarding Applicant’s poor financial condition and also clear that Applicant bore the responsibility of providing such evidence. Moreover, DOHA sent the FORM to Applicant with a cover letter that stated that she had “an opportunity to review the attached copy of the complete file and submit any material [she wished] the Administrative Judge to consider or to make any objections [she] may have as to the information in the File.” The cover letter advised that Applicant had 30 days from receipt in which to submit her objections or additional information. The FORM and cover letter were accompanied by a copy of the Directive, which contains guidance as to an applicant’s rights and responsibilities in DOHA adjudications. Applicant signed a receipt for the package that included the cover letter, FORM, and Directive.

Applicant received notice sufficient to apprise a reasonable person as to the kind of evidence that might mitigate the concerns arising from her delinquent debts and of her responsibility to provide such evidence. As the Judge noted, however, Applicant did not provide a response to the FORM. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. *See, e.g.*, ISCR Case No. 10-03743 at 2 (App. Bd. Jun. 24, 2011). Applicant was not denied reasonable notice of her rights and obligations regarding mitigation.

Applicant challenges the Judge’s findings about her monthly income and expenses. These findings are based upon the Personal Financial Statement that Applicant submitted in her response to DOHA interrogatories. Item 5 at 9. We find no error in the challenged findings. If Applicant believed that her Personal Financial Statement needed to be updated or explained it was her responsibility to provide such information. The Judge’s material findings of security concern are supported by substantial evidence. Applicant has not cited to any harmful error in the Judge’s findings. *See, e.g.*, ISCR Case No. 11-12803 at 3 (App. Bd. Feb. 21, 2014).

Applicant has submitted evidence not contained in the record. We cannot consider new evidence on appeal. *See, e.g.*, ISCR Case No. 12-00703 at 2 (App. Bd. Feb. 27, 2014). 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