

KEYWORD: Guideline F

DIGEST: The Appeal Board cannot consider new evidence on appeal. Adverse decision affirmed.

CASENO: 12-02590.a1

DATE: 05/08/2014

DATE: May 8, 2014

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In Re: )  
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----- ) ISCR Case No. 12-02590  
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Applicant for Security Clearance )  
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**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 September 11, 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 January 31, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr., 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 findings of fact contained errors and 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 has been employed by a Defense contractor since 2011. He has not previously held a security clearance.

Applicant has over \$47,000 in delinquent debt, nearly \$35,000 of which is for building materials he purchased through his roofing business for the construction of his house. The mortgage he obtained for the house was not enough to cover all of the building costs. The other debts pertain to delinquent state and Federal employment taxes and a second mortgage on his house. Applicant states that he is paying \$300 a month on the building materials debt, but he corroborated only one such payment. He has made no payments on any of the other debts. His financial statement shows that, except for the \$300 monthly payment, he lacks the means to address his debts.

He attributes his financial problems to the failure of his business and to a brief period of unemployment. He has been continuously employed since August 2010. He did not corroborate his claim to have been injured on the job six months after starting up his business. By the time he was able to return to work, the country was experiencing an economic downturn, which affected his business. He has not received any financial or credit counseling.

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

The Judge concluded that Applicant had not mitigated the concerns arising from his financial difficulties. He cited to evidence that these difficulties are recent and multiple and stated that Applicant had failed to demonstrate that they resulted from circumstances outside his control. He stated that Applicant had provided evidence of only one payment in satisfaction of the building materials debt, and that Applicant had not demonstrated a plan for addressing the totality of his debts. He said that Applicant appears to have disregarded his financial obligations for many years.

### **Discussion**

Applicant challenges some of the Judge's findings of fact. Among other things, he argues that the Judge erred in stating that he had a delinquent debt for a second mortgage. We evaluate a Judge's findings to see if they are supported by substantial record evidence. *See, e.g.*, ISCR Case No. 11-13948 at 3 (App. Bd. Feb. 26, 2014). Applicant's SOR contained four allegations. One was for the debt for building materials, two were for tax debts, and the final one was a collection account

owed to a bank in the amount of \$4,098. We have found nothing in the record to show that this last debt was for a delinquent second mortgage. Applicant admitted the allegation, describing it as a business debt. The Judge's finding is not supported by the record, although, even if he had not made the error, there is no reason to believe that he would have decided the case differently. Therefore, it is harmless. Beyond that, the Judge's material findings are supported by substantial evidence or constitute reasonable inferences from the evidence.

In support of his appeal, Applicant has submitted evidence from outside the record regarding additional payments for his building materials debt. 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. Viewed in light of the totality of the evidence, 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: Jeffery D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

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