



to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

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

Applicant admitted that he committed six security violations between 1991 and 2010. Applicant wrote that he takes his responsibilities very seriously, the alleged incidents were not the result of disregard of procedures, he has learned from his mistakes, and he is much more careful today. "While it has been several years since Applicant was last cited or involved with security violations, no independent evidence, such as character letters, employment evaluations, or counselling or remedial security training reports, has been introduced to establish that Applicant has significantly changed his conduct to insure that these violations will not occur in the future. . . ." Decision at 5. The Judge concluded no mitigating conditions applied in this case.

### **Discussion**

Applicant challenges the Judge's conclusion that no independent evidence was introduced to establish that he significantly changed his conduct to ensure security violations will not occur in the future. In this regard, he points out that, in his response to Department Counsel's File of Relevant Material, he requested that the Government provide the Judge with the results of his coworker's interviews that were obtained during his security investigation because he believed those interviews would have positive statements concerning his emphasis on security, overall stability, and suitability for a position of trust. We do not find this argument persuasive. Because Applicant admitted the security violations alleged in the SOR, he was responsible for presenting witnesses and other evidence in rebuttal, explanation, extenuation, or mitigation. He also had the ultimate burden of persuasion for obtaining a favorable clearance decision. Directive ¶ E31.15. Department Counsel had no obligation to present evidence in mitigation. The record presented to the Judge did not contain the results of the coworker's interviews. From our review of the record, we find no error in the Judge's challenged conclusion.

In the appeal brief, Applicant submitted character letters, employment evaluations, training records, and other documents that were not presented to the Judge for consideration. Such documents constitute new evidence that the Appeal Board cannot consider. Directive ¶ E31.29.

The Judge examined the relevant evidence 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: William S. Fields

William S. Fields

Administrative Judge

Member, 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