

KEYWORD: Guideline F

DIGEST: Applicant claims that he never received Department Counsel’s File of Relevant Material (FORM) The record, however, does not support his claim. On April 5, 2019, Department Counsel sent Applicant a copy of the FORM. The FORM advised Applicant that he had 30 days to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate and that, if he did not file any objections or submit any additional information before the deadline, his “case will be assigned to an Administrative Judge for a determination based **solely** on this FORM.” The record contains a receipt for the FORM signed by Applicant on May 7, 2019. Since Applicant received the FORM and was provided a 30-day opportunity to respond to it, he has not established that he was denied any due process afforded by Directive. Adverse decision affirmed

CASENO: 19-00147

DATE: 10/11/2019

DATE: October 11, 2019

_____)
In Re:)
)
-----) ISCR Case No. 19-00147
)
)
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 February 8, 2019, 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 July 29, 2019, after considering the record, Administrative Judge Carol G. Ricciardello denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant had seven delinquent debts totaling about \$85,800. The Judge found in favor of Applicant on five of the debts, which are not at issue on appeal. The Judge found against Applicant on two student loans totaling about \$66,700 that have been placed for collection. In responding to the SOR, Applicant admitted the allegations involving the two student loans and indicated he was currently working on a payment plan with the creditor, did not have information to send about their status, and would be able to send information at a later date. He submitted no further information on those loans.

On appeal, Applicant raises a due process issue. He claims that he never received Department Counsel’s File of Relevant Material (FORM), which is apparently the reason why he did not submit further information. He argues that the Judge based her decision on outdated and inaccurate information. The record, however, does not support his claim. On April 5, 2019, Department Counsel sent Applicant a copy of the FORM. The FORM advised Applicant that he had 30 days from its receipt to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. It further stated that, if he did not file any objections or submit any additional information before the deadline, his “case will be assigned to an Administrative Judge for a determination based **solely** on this FORM.” FORM at 3. [Emphasis added.] The record contains a receipt signed by Applicant showing he received the FORM on May 7, 2019. Since Applicant received the FORM and was provided a 30-day opportunity to respond to it, he has not established that he was denied any due process afforded by Directive. *See* Directive ¶ E3.1.7. Applicant also contends that he advised DOHA in a letter in February 2019 (presumably his March 10, 2019 SOR response) “that if any more information was needed to support my case, to please contact me and I will provide the evidence” Appeal Brief at 1. We are unable to find that statement in the record.

Applicant’s appeal brief contains assertions and documents that were not provided to the Judge for consideration. The Appeal Board cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant has not established that the Judge committed any harmful error. 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, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility 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