

KEYWORD: Guideline E; Guideline F

DIGEST: In his appeal brief, Applicant raises a due process issue. He contends that he “wasn’t given an opportunity to explain what happen[ed] to [him], or how [he] intended to remedy the problem[.]” He states that the Judge was constantly “looking at the clock like [he] was wasting her time[.]” He also indicated this conduct made him nervous and “as soon as [he] was rushed out of the court room a large number of men in suits piled into the room and [he] was swiftly discarded.” The transcript reflects that Applicant was asked questions about each of the SOR allegations and was given an opportunity to explain the circumstances surrounding each of them. At the end of the hearing, Applicant responded in the negative when asked whether he had any other evidence to present and responded in the affirmative when asked whether he rested his case. Furthermore, the record was left open for two weeks after the hearing to provide Applicant the opportunity to present additional matters. Applicant has not established that he was denied the due process afforded him under the Directive. Adverse decision affirmed.

CASENO: 18-01482.a1

DATE: 09/06/2019

DATE: September 6, 2019

In Re:	)	
	)	
-----	)	ISCR Case No. 18-01482
	)	
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 September 28, 2018, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 21, 2019, after the hearing, Administrative Judge Darlene D. Lokey Anderson denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline F, the SOR alleged that Applicant had failed to file his Federal and state income tax returns for ten years between 2002 and 2014; that he failed to file Federal and state income tax returns for 2015 and 2016 in a timely manner; that the IRS wrote off his 2003 Federal income tax debt; that he owes about \$23,500 in past-due Federal taxes; and that he had four other delinquent debts totaling over \$17,000. In responding to the SOR, Applicant admitted the Federal and state tax deficiencies. He also admitted one of the other alleged debts and denied the other three. The Judge found against Applicant on the Federal and state tax deficiencies and on two of the four other delinquent debts.

Under Guideline E, the SOR alleged that Applicant falsified a response to a question in a 2017 security clearance application and falsified four responses to questions in a 2018 interrogatory. These questions at issue involved his filing of Federal and state tax returns. In his SOR response, he admitted each of the falsification allegations. The Judge found against Applicant on each of the falsification allegations.

In his appeal brief, Applicant raises a due process issue. He contends that he “wasn’t given an opportunity to explain what happen[ed] to [him], or how [he] intended to remedy the problem[.]” Appeal Brief at 1. He states that the Judge was constantly “looking at the clock like [he] was wasting her time[.]” *Id.* He also indicated this conduct made him nervous and “as soon as [he] was rushed out of the court room a large number of men in suits piled into the room and [he] was swiftly discarded.” *Id.* The transcript reflects that Applicant was asked questions about each of the SOR allegations and was given an opportunity to explain the circumstances surrounding each of them. At the end of the hearing, Applicant responded in the negative when asked whether he had any other evidence to present (Tr. at 109) and responded in the affirmative when asked whether he rested his case (*Id.*). Furthermore, the record was left open for two weeks after the hearing to provide Applicant the opportunity to present additional matters. (Tr. at 108). Applicant has not established that he was denied the due process afforded him under the Directive.

Applicant’s brief also explains the circumstances surrounding his tax problems and his intentions for resolving them. His arguments, however, are neither enough to rebut the presumption that the Judge considered all of the evidence in the record nor sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-02488 at 3 (App. Bd. Aug. 30, 2018). He further indicates that he will lose a job opportunity if he is denied a security clearance. The Directive does not permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 14-02619 at 3 (App. Bd. Apr. 7, 2016).

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