

KEYWORD: Guideline F

DIGEST: The documents accompanying the SOR appropriately advised Applicant of his right either to request a hearing before an Administrative Judge or, if he wished, to have the Administrative Judge issue a decision based upon the administrative record without a hearing. As noted above, Applicant elected to have the Judge issue his decision based upon the administrative record. Adverse decision affirmed.

CASE NO: 19-01320.a1

DATE: 12/13/2019

DATE: December 13, 2019

In Re:)	
)	
-----)	ISCR Case No. 19-01320
)	
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 May 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 September 27, 2019, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Elizabeth M. Matchinski denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant’s appeal brief contains documents (most of which postdate the Decision) and assertions that were not previously submitted to the Judge for consideration. The Appeal Board is prohibited from considering new evidence. Directive ¶ E3.1.29.

In his brief, Applicant contends that, due to time constraints, he was unable to fully address the alleged security concerns. He asserts that he “faithfully engaged in discovery” until time was exhausted for submitting matters and that he “was not clear on how to prepare my SOR, nor was [he] aware how important it was to be present at the hearing and, in fact, that is the crux of [his] appeal.” Appeal Brief at 1-2. Applicant did not make any of these assertions in responding to the SOR. The documents accompanying the SOR appropriately advised Applicant of his right either to request a hearing before an Administrative Judge or, if he wished, to have the Administrative Judge issue a decision based upon the administrative record without a hearing. As noted above, Applicant elected to have the Judge issue his decision based upon the administrative record. *See* Items 1 and 2 of Department Counsel’s File of Relevant Material (FORM).

It also merits noting that Applicant was forwarded the FORM on June 24, 2019. He received it on July 1, 2019, and was given 30 days from its receipt to file objections or submit additional matters. He did not submit a response to the FORM. Applicant has failed either to allege or establish that the Judge abused her discretion in the processing of this case. From our review of the record, Applicant was provided the due process rights afforded him under the Directive.

Applicant further notes the Judge’s adverse decision has had a negative impact on him. The Directive, however, does not permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 14-04202 at 4 (App. Bd. Dec. 24, 2015).

Applicant’s appeal brief raises no allegation of error on the part of the Judge. The Board does not review cases *de novo*. The Appeal Board’s authority to review a case is limited to cases in which the appealing party has alleged the Judge committed harmful error. Because Applicant has not made such an allegation of error, the decision of the Judge denying Applicant a security clearance is affirmed.

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