

KEYWORD: Guideline F

DIGEST: The Judge did not err in his comments regarding not having had an opportunity to evaluate Applicant’s demeanor. From our review of the record, there is no reason to conclude the Judge’s decision to deny Applicant national security eligibility was based in any degree on him not requesting a hearing. Adverse decision is affirmed.

CASE NO: 19-02544.a1

DATE: 08/31/2020

DATE: August 31, 2020

In Re:)	
)	
-----)	ISCR Case No. 19-02544
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Mendez, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 10, 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. In an undated decision, Administrative Judge LeRoy F. Foreman denied Applicant’s request for a security clearance after considering the record evidence.¹ Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant had nine delinquent debts totaling over \$31,900. In responding to the SOR, he admitted seven of those debts and denied two of them. The Judge treated one of Applicant’s debt admissions as a denial. The Judge found in favor of Applicant on two debts, concluding one was a duplicate debt and the creditor of the other engaged in fraudulent conduct. The Judge concluded that Applicant did not resolve four of the alleged debts until after the SOR was issued and that he failed to provide adequate documentation showing resolution of three other debts. In his whole-person analysis, the Judge stated:

[Applicant] has resolved several of his delinquent debts, but he has not established a track record of financial responsibility. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. *See* ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). [Decision at 8.]

In his appeal brief, Applicant contends the Judge based his decision on him “not asking for a hearing” and notes the Judge’s comment about not having an opportunity to evaluate his credibility and demeanor. In the Appeal Board decision cited above, we stated:

When there is no hearing, the Judge has no opportunity to form impressions about a person’s credibility based on demeanor. Accordingly, credibility determinations based a written nonhearing record are not entitled to the deference given to credibility determinations based on demeanor observations of a witness made during his or her testimony. Indeed, a credibility determination made by a Judge without the benefit of demeanor observations is indistinguishable from a Judge’s fact-finding about purely documentary evidence.

The Judge did not err in his comments regarding not having had an opportunity to evaluate Applicant’s demeanor. From our review of the record, there is no reason to conclude the Judge’s decision to deny Applicant national security eligibility was based in any degree on him not requesting a hearing.

Applicant also cites the Judge’s conclusion that he resolved several of the debts but had not yet established a track record of financial responsibility. Although Applicant is apparently challenging that conclusion, he does not explain his basis for challenging it and fails to establish it is arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3.

¹ The cover letter forwarding the decision to Applicant is dated June 2, 2020.

Applicant has failed to establish the Judge committed any harmful errors. 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