

KEYWORD: Guideline F

DIGEST: For the purpose of making a whole-person assessment, Applicant notes that he is in compliance with all but one of the adjudicative guidelines. Applicant’s arguments are not enough to establish that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Moreover, the Directive does not require that security concerns arising from admitted or proven SOR allegations under one or more of the guidelines be weighed or balanced against non-alleged guidelines in making a whole-person assessment. Such a comparison of alleged verses non-alleged guidelines is not a meaningful consideration in assessing security clearance eligibility. Adverse decision is affirmed.

CASE NO: 19-00351.a1

DATE: 01/09/2020

DATE: January 9, 2020

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In Re:)	
-----)	ISCR Case No. 19-00351
)	
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 April 5, 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 October 11, 2019, after the hearing, Administrative Judge Robert Robinson Gales denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR set forth 20 allegations of financial deficiencies, including failure to file tax returns as required. The Judge found against Applicant on ten of the allegations and in favor of him on the remaining allegations. The adverse findings involved Applicant’s failure to file his Federal income returns for 2010-2012 and 2015-2016 as required, his failure to file his state income tax returns for 2009-2012 and 2015-2016 as required; and eight delinquent debts totaling over \$35,000. The delinquent Federal and state income tax returns were filed in April 2019, after issuance of the SOR. Regarding the unfavorable debt findings, the Judge noted that Applicant failed to submit documentation to show those debts were resolved or being resolved.

Applicant’s appeal brief contains assertions and a document that are not contained in the record. The Appeal Board is prohibited from considering new evidence on appeal. Directive E3.1.29. Applicant states, “It is my understanding that I can present new evidence if the evidence was not available for the first judgement.” Appeal Brief at 1. This contention is incorrect. Information not previously submitted to the Judge for consideration constitutes “new evidence.” *See, e.g.*, ISCR Case No. 18-00287 at 2, n.1 (App. Bd. Apr. 3, 2019).

Applicant states he is not contesting the Judge’s findings of fact, but is challenging his weighing of the evidence. He notes that, with the exception of 2016, he was entitled to tax refunds for the other years. For the purpose of making a whole-person assessment, he also notes that he is in compliance with all but one of the adjudicative guidelines. Applicant’s arguments are not enough to establish that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-04856 at 3 (App. Bd. Mar. 9, 2017). Moreover, the Directive does not require that security concerns arising from admitted or proven SOR allegations under one or more of the guidelines be weighed or balanced against non-alleged guidelines in making a whole-person assessment. *See, e.g.*, ISCR Case No. 15-05647 at 2 (App. Bd. May 14, 2018). Such a comparison of alleged verses non-alleged guidelines is not a meaningful consideration in assessing security clearance eligibility.

Applicant has failed to establish 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