

KEYWORD: Guideline F

DIGEST: Applicant raises issues regarding his background investigation. For example, he asserts that statements he made about his employment status were not noted in the interview summary. He also contends that, if a more thorough background investigation had been conducted, it would have showed his willingness to correct his financial responsibilities. The Appeal Board's jurisdiction, however, is limited to the issues set forth in Directive ¶ E3.1.32. We have no authority over how background investigations are conducted. Adverse decision is affirmed.

CASE NO: 19-02166.a1

DATE: 06/24/2020

DATE: June 24, 2020

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In Re:)	
)	
-----)	ISCR Case No. 19-02166
)	
)	
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 August 30, 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 February 21, 2020, after considering the record, 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 alleged that Applicant failed to file, as required, his Federal income tax returns for 2014, 2015, 2017, and 2018; that he owed Federal taxes for 2014 through 2018 totaling about \$15,000; and that he had six other delinquent debts totaling over \$6,000. Noting that Applicant provided copies of the Federal tax returns for the years in question (two undated), the Judge concluded those tax returns were not filed in a timely manner. Applicant resolved two of the alleged debts (a bank account and automobile loan) totaling about \$1,500 but failed to provide adequate documentation showing the other debts have been sufficiently addressed. The Judge found in favor of Applicant on the two resolved debts and against him on the other allegations.

Applicant’s appeal brief contains documents and assertions that are not included in the record. Some of the documents postdate the Judge’s decision. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

Applicant raises issues regarding his background investigation. For example, he asserts that statements he made about his employment status were not noted in the interview summary. He also contends that, if a more thorough background investigation had been conducted, it would have showed his willingness to correct his financial responsibilities. The Appeal Board’s jurisdiction, however, is limited to the issues set forth in Directive ¶ E3.1.32. We have no authority over how background investigations are conducted. *See, e.g.*, ISCR Case No. 09-06026 at 3 (App. Bd. Mar. 5, 2013). As provided in Directive ¶ E3.1.15, Applicant was responsible for presenting evidence to the Judge to rebut, explain, extenuate, or mitigate security concerns that he admitted or that were proven by Department Counsel.

Applicant notes that he initially requested a hearing, later opted to have the decision made on the written record, and now regrets making that change. This contention asserts no error on the part of DOHA or the Judge and is not an appealable issue. Directive ¶ E3.1.32. He also appears to challenge some of the Judge’s findings, such as those pertaining to his educational background, but fails to identify any error that could likely affect the outcome of the case. *See, e.g.*, ISCR Case No 19-01220 at 3 (App. Bd. Jun. 1, 2020) (noting an error is harmless if it did not likely affect the outcome of the case).

Applicant highlights conditions that resulted in his financial problems and argues he is trustworthy and is willing to correct those problems. These arguments amount to a disagreement with the way in which the Judge weighed the evidence and 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. 15-04856 at 2-3 (App. Bd. Mar. 9, 2017). Applicant requests the Appeal Board treat him as a “minority” under the guidelines. Appeal Brief at 3-4. To the extent he may be requesting that we grant him an exception under Directive, Encl. 2, App. C, he has failed to establish such an exception is merited.

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