

KEYWORD: Guideline G; Guideline J

DIGEST: Applicant states that he regrets choosing to have his case decided on the written record and requests his case be remanded for a hearing. Absent a showing of factual or legal error that affects a party's right to present evidence in the proceeding below, a party does not have the right to have a second chance at presenting his or her case before an administrative judge. Adverse decision affirmed.

CASE NO: 19-03083.a1

DATE: 09/30/2020

DATE: September 30, 2020

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 19-03083
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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 December 11, 2019, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On June 24, 2020, after considering the record, Administrative Judge LeRoy F. Foreman denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant’s appeal brief makes no assertion of harmful error on the part of the Judge. His brief does contain assertions and documents that were not presented to the Judge for consideration. More specifically, he highlights statements the Judge made in the decision about the lack of evidence concerning pertinent matters, including the mitigating conditions, and now provides new evidence to address those deficiencies. The Appeal Board, however, is prohibited from considering new evidence. Directive ¶ E3.1.29.

Applicant states that he regrets choosing to have his case decided on the written record and requests his case be remanded for a hearing. Absent a showing of factual or legal error that affects a party’s right to present evidence in the proceeding below, a party does not have the right to have a second chance at presenting his or her case before an administrative judge. *See, e.g.*, ISCR Case No. 14-02730 at 2 (App. Bd. Jun. 24, 2016). Applicant says that he declined the hearing in part because of the costs of attending a hearing in the Washington, DC area. In fact, the option for a hearing which he declined says, “In person at a location within 150 miles of your home or workplace, or by video teleconference (VTC) hearing before an Administrative Judge.” File of Relevant Material (FORM), last page of Item 1. Had he selected a hearing it would not have involved travel to the Washington, DC area. Applicant has not demonstrated error below and is not entitled to a hearing just so he can have another opportunity to present his case.

The Board does not review a case *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. Applicant has not made an allegation of harmful error on the part of the Judge. Therefore, the decision of the Judge is sustainable.

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