

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant argues the Judge’s decision is based on incomplete information. For example, he points out that he provided the names of character references in his security clearance application and none of them were contacted to obtain whole-person information about him. This argument is not persuasive. A Judge has no authority to interview individuals or otherwise serve as an investigator in the case, which would be inconsistent with his or her duty of impartiality. Adverse Decision Affirmed.

CASE NO: 19-02295.a1

DATE: 09/03/2021

DATE: September 3, 2021

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In Re:)	
)	
-----)	ISCR Case No. 19-02295
)	
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 January 16, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On June 2, 2021, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in her findings of fact and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact and Analysis

Applicant, who is in his fifties, works for a defense contractor. He is married, has a child, and holds a Ph.D. The SOR alleges that he has 11 delinquent debts totaling about \$27,700. Applicant admitted each of these allegations. His financial problems arose because he was living beyond his means. About six years ago, he also lost a job and was unable to make consistent payments towards the delinquent debts. He attended financial planning classes and claims he has changed his spending habits and is living within his means. He has received settlement offers for some of the accounts, but each of the alleged debts remain unresolved. He has not demonstrated his financial problems are under control or unlikely to recur.

About six years ago, Applicant was terminated from a Federal Government position due to misconduct. He had held that position for over 25 years. During this employment, he was charged with making false statements and failure to observe written procedures. He received a notice of proposed removal, but it was held in abeyance when he entered into a Last Chance Agreement (LCA), which placed him in a two year probationary status. In signing the LCA, he admitted the charges in the removal notice were true. About three or four months after signing the LCA, his employer determined he violated the agreement and removed him from the position. He appealed that decision to the Merit System Protection Board, but that appeal was dismissed for lack of jurisdiction because he waived his appeal rights in the LCA. He contends his removal from the position was unjust and based on his supervisor’s misunderstandings and incorrect assumptions regarding his conduct. He has not taken responsibility for his misconduct, which raises serious questions about his reliability, trustworthiness, and good judgment.

Applicant has presented letters of recommendation that attest to his reliability, trustworthiness, and good judgment. He recently received his Ph.D. in Philosophy with an overall GPA of 3.71.

Discussion

Applicant contends that the Judge erred in her findings about his Ph.D. and GPA, noting he has not completed his Ph.D in a different subject than the Judge noted. These errors, however, are harmless because they did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013).

Applicant argues the Judge's decision is based on incomplete information. For example, he points out that he provided the names of character references in his security clearance application and none of them were contacted to obtain whole-person information about him. This argument is not persuasive. A Judge has no authority to interview individuals or otherwise serve as an investigator in the case, which would be inconsistent with his or her duty of impartiality. *See, e.g.*, ISCR Case No. 19-01539 at 4 (App. Bd. Jan. 9, 2020). Additionally, Directive ¶ E3.1.15 provides "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." If Applicant wanted the Judge to consider specific evidence, he was responsible for presenting it to her. None of Applicant's arguments are enough to rebut the presumption that the Judge considered all of the evidence in the record nor are they 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. 19-01400 at 2 (App. Bd. Jun. 3, 2020).

Applicant notes a comment at the end of his interview summary to the effect that nothing in Applicant's background could be used for blackmail. Even if that represents the considered opinion of the clearance investigator it is not binding on the DoD in its evaluation of Applicant's case. *See, e.g.*, ISCR Case No. 18-02158 at 3 (App. Bd. Aug. 7, 2019).

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, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information 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