



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
POST OFFICE BOX 3656
ARLINGTON, VIRGINIA 22203
(703) 696-4759

KEYWORD: Guideline F

DIGEST: At the beginning of the hearing, the Judge noted he served as Department Counsel’s military supervisor in approximately 1995. On the record, both the Judge and Department Counsel agreed they have not worked together since then and have not interacted personally or professionally in at least a couple of decades. Applicant was given an opportunity to express an objection and responded: “Your honor, I have no objection at all. You know I’m happy to be in the same room with two fellow shipmates. You know, and I appreciate your honest and candor. Thank you.” Tr. at 8-9. Having had the opportunity to object at the hearing, Applicant cannot now object merely because the Judge rendered an unfavorable decision. Applicant has not directed our attention to anything in the record that would likely persuade a reasonable person that the Judge was lacking in the requisite impartiality. His argument fails to meet the heavy burden on him to rebut the presumption that a Judge is impartial and unbiased. Adverse Decision is Affirmed.

CASE NO: 19-03666.a1

DATE: 10/28/2021

Date: October 28, 2021

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 In the matter of:)
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 Applicant for Security Clearance)
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ISCR Case No. 19-03666

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 February 6, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On July 19, 2021, after the hearing, Administrative Judge Robert Tuider 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 had 15 delinquent debts totaling about \$43,500 and that he had three bankruptcy filings. In responding to the SOR, Applicant admitted ten of the SOR allegations with explanations and denied the others. The Judge found against Applicant on each SOR allegation. The Judge concluded that Applicant presented insufficient evidence to mitigate the alleged security concerns.

Applicant raised the following issues on appeal: whether the Judge’s decision is unfair because it does not address a Federal law, regulations, and policies on race, age discrimination, and diversity; whether the Judge erred in failing to address unfair practices involving minorities in the financial industry; whether the Judge was biased; and whether the Judge’s decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge’s decision.

Discrimination Issues

Applicant’s appeal brief raises two discrimination issues. First, he contends the Judge’s decision violates DoD policy because it did not address the following: (1) Civil Rights Act of 1964, Pub. L. 88-352, (2) Executive Order 12067, Providing for Coordination of Federal Equal Opportunity Programs, (3) DoD Directive 1020.02E, Diversity Management and Equal Opportunity in the DoD, (4) DoD Directive 5500.11, Nondiscrimination in Federally Assisted Programs, (5) DoD Instruction 1020.05, DoD Diversity and Inclusion Management Program, (6) Military Leadership Diversity Commission, Issue Paper #23, Military Occupations and Implications of Racial/Ethnic and Gender Diversity, (7) DoD Board on Diversity and Inclusion Report, Recommendation to Improve Racial and Ethnic Diversity and Inclusion in the U.S. Military, and (8) DoD Directive 5220.6. (identified above as the Directive) ¶ 6.3.3. Applicant contends these authorities and policies are relevant to his case. We interpret this assignment of error as Applicant claiming the Judge’s decision is contrary to law. *See, e.g.*, ISCR Case No. ISCR 02-20115 at 2 (App. Bd. Jul. 29, 2005)(the Board will consider whether the Judge’s decision

contravenes the provisions of Executive Order 10865, the Directive, or other applicable Federal law in determining if it is contrary to law.).

The Appeal Board addresses the material issues raised by the parties to determine whether the Judge committed factual or legal error. Directive ¶¶ E3.1.32 – E3.1.32.3. There is no presumption of error below, and the appealing party must raise claims of error with specificity and identify how the Administrative Judge committed factual or legal error. *See, e.g.*, ISCR Case No. 02-12199 at 2 (App. Bd. Aug. 8, 2005). Based on our review of Applicant’s appeal brief, we are unable to discern the basis for his claim that the Judge violated DoD policy. His brief merely cites six of the above-listed authorities and policies and quotes provisions from the other two authorities, *i.e.*, the “Purpose” paragraphs in DoD Directive 1020.02E and DoD Instruction 1020.05 and the “Data Collection and Requirements” paragraph of the latter instruction. His brief does not explain how the cited authorities or the quoted provisions apply to his case. Beyond that, however, he does not identify any specific DoD requirement or policy the Judge supposedly violated. In short, this assignment of error fails for a lack of specificity. *See, e.g.*, ISCR Case No. 17-03372 at 2-3 (App. Bd. Oct. 19, 2018) (discussing the reasons why assignments of error must be set forth with specificity). Applicant’s assertions fail to establish the Judge’s decision is contrary to law.

Regarding the second discrimination issue in his brief, Applicant notes there are “non-ethnic friendly activities of the financial industry including credit reporting agencies, lending institutions and unfair practices to minorities in certain ethnic (sic) group, *i.e.* Black/African Americans, and Hispanic Americans.” Appeal Brief at 1. If Applicant intended this statement to constitute an allegation of error, it fails because he did not assert, establish, or indicate how any of his financial problems alleged in the SOR were the result of, or impacted by, any unfair practices in the financial industry toward minorities. This assignment of error also fails for a lack of specificity.

Bias

Applicant’s brief raises the issue of the Judge’s impartiality. He notes that the Judge served with Department Counsel in the military and that he, having served in the military, has direct personal experience with unfair behavior. To the extent that he is claiming the Judge lacked impartiality or was biased against him, we do not find this argument persuasive. At the beginning of the hearing, the Judge noted he served as Department Counsel’s military supervisor in approximately 1995. On the record, both the Judge and Department Counsel agreed they have not worked together since then and have not interacted personally or professionally in at least a couple of decades. Applicant was given an opportunity to express an objection and responded: “Your honor, I have no objection at all. You know I’m happy to be in the same room with two fellow shipmates. You know, and I appreciate your honest and candor. Thank you.” Tr. at 8-9. Having had the opportunity to object at the hearing, Applicant cannot now object merely because the Judge rendered an unfavorable decision. Applicant has not directed our attention to anything in the record that would likely persuade a reasonable person that the Judge was lacking in the requisite impartiality. His argument fails to meet the heavy burden on him to rebut the presumption that a Judge is impartial and unbiased. *See, e.g.*, ISCR Case No. 18-02722 at 5 (App. Bd. Jan. 30, 2020).

Weighing Evidence

Applicant argues the Judge’s whole-person assessment is deficient. He points out, for example, that he has maintained a security clearance for 38 years without incident, notes he has honorably served our country with distinction, and highlights his character reference letter. These arguments amount to a disagreement with the Judge’s weighing of the evidence and are not enough to rebut the presumption that the Judge considered all of the evidence in the record or to demonstrate 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). He also notes that loss of his security clearance will disrupt his life. On this last point, the Directive does not permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 17-03024 at 3 (App. Bd. Jan. 9, 2020).

Conclusion

Applicant has failed to establish 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 the record. “The general standard is that a clearance may be granted only when ‘clearly consistent with 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 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