



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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KEYWORD: Guideline F

DIGEST: Applicant contends the Judge failed to observe how the mitigating conditions applied and, in doing so, erred in his analysis of the adjudicative guidelines. He argues, for example, that his financial problems did not cast doubt on his security clearance worthiness, noting they were dated, infrequent, and resulted from condition largely beyond his control. None of his arguments, however, are sufficient 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. Adverse Decision is Affirmed.

CASE No: 20-00772.a1

DATE: 11/15/2021

Date: November 15, 2021

In the matter of:)	
)	
-----)	ISCR Case No. 20-00772
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan Preston Palmer, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 15, 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 Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On August 26, 2021, after considering the record, Administrative Judge Richard A. Cefola 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 and state income taxes for 2015, 2016, and 2018; that he owed the state about \$650 in delinquent taxes for 2015; and that he had seven other delinquent debts totaling over \$42,000. In responding to the SOR, Applicant admitted some of the allegations and denied others. The Judge found against him on the tax allegations and four of the debts totaling about \$23,000. The Judge concluded that Applicant’s financial problems establish disqualifying conditions and there are no indications those problems are under control.

Applicant’s appeal brief contains documents that postdate the Judge’s decision. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

On appeal, Applicant noted that Judge found none of the mitigating condition applied even though he found in favor of Applicant on three of the alleged debts. We agree this does reflect an apparent contradiction because it seems likely that the Judge concluded some of the mitigating conditions at least partially applied to the favorable findings. This error, however, was harmless because it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 18-02239 at 3 (App. Bd. Jul. 20, 2020).

In general, Applicant contends the Judge failed to observe how the mitigating conditions applied and, in doing so, erred in his analysis of the adjudicative guidelines. He argues, for example, that his financial problems did not cast doubt on his security clearance worthiness, noting they were dated, infrequent, and resulted from condition largely beyond his control. None of his arguments, however, are sufficient 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. 19-01495 at 3 (App. Bd. Sep. 30, 2020)

In his brief, Applicant requests that his case be remanded to the Judge so he can have a hearing. He notes he never had a hearing and states he is investigating how a decision on the written record was requested. The record contains a letter signed by Applicant, dated October, 30, 2020, entitled, Answer to the Statements of Reasons Document. In that letter, Applicant stated, “I do not wish to request a hearing at this time.” Department Counsel’s File of Relevant Material, Item 4 at 2. Directive ¶ E3.1.7 provides that “[i]f the applicant has not requested a hearing with his or her answer to the SOR and Department Counsel has not requested a hearing with 20 days of receipt of the applicant’s answer, the case shall be assigned to the Administrative Judge for a clearance decision based on the written record.” If Applicant wanted a hearing, he was required to request one affirmatively. Since neither Applicant nor Department Counsel requested a hearing, the case was presented appropriately to the Judge for a decision on the written record.

As to Applicant request for a hearing, a party does not have the right to have a second chance at presenting his or her case before an administrative judge absent a showing of factual or legal error that affects a party's right to present evidence in the proceeding below. *See, e.g.*, ISCR Case No. 14-02730 at 2 (App. Bd. Jun. 24, 2016). Applicant has not demonstrated such error below and is not entitled to a hearing just so he can have another opportunity to present his case.

Applicant has failed to establish the Judge committed any harmful errors. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record.

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