



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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KEYWORD: Guideline J; D

DIGEST: Applicant in essence contends that Department Counsel’s File of Relevant Material (FORM) contains inaccurate facts concerning how he received his clearance and the number of his children. However, an error in a FORM, as opposed to one in a Judge’s decision, is not an appealable issue.

Applicant appears to contend that, due to inaccuracies and omissions in the FORM, the Judge was not aware of important facts in his case. His brief contains court records that reflect various criminal charges were expunged from his record. Those court records are in the FORM and were addressed in the Judge’s decision. None of Applicant’s arguments are either sufficient to rebut the presumption that the Judge considered all the evidence in the record or enough to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse Decision is Affirmed.

CASE No: 20-00828.a1

DATE: 12/07/2021

Date: December 7, 2021

In the matter of:)	
)	
-----)	ISCR Case No. 20-00828
)	
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 May 7, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct) and Guideline G (Alcohol Consumption) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. In the File of Relevant Material (FORM), Department Counsel withdrew the Guideline G allegation and added other Guideline J allegations. On October 18, 2021, after considering the record, Defense Office of Hearings and Appeals (DOHA) 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.

Under Guideline J, the SOR alleged that Applicant was charged with various criminal offenses on 11 occasions between 2011 and 2018. These charges included domestic violence, second degree assault, attempting to drive a vehicle while impaired by alcohol, credit card fraud, petit larceny, disorderly conduct, violation of protective order, harassment, and electronic mail harassment. Applicant was found guilty of attempting to drive a vehicle while impaired by alcohol in 2014 and petit larceny in 2015. In general, the other charges were either dismissed, not prosecuted, or expunged from his record. The Judge found against Applicant on all of the allegations.

In his appeal brief, Applicant in essence contends that Department Counsel’s File of Relevant Material (FORM) contains inaccurate facts concerning how he received his clearance and the number of his children. However, an error in a FORM, as opposed to one in a Judge’s decision, is not an appealable issue. *See, e.g.*, ISCR Case No. 15-00535 at 2 (App. Bd. Mar. 13, 2017). In this regard, we note the Judge erred in finding that Applicant had “no children.” Decision at 3. Applicant did not disclose that he had children in his security clearance application but did so during his background interview. FORM Items 2 at 20-22 and 3 at 5. The Judge’s error, however, was harmless. *See, e.g.*, ISCR Case No. 19-01220 at 3 (App. Bd. Jun. 1, 2020) (an error is harmless if it did not likely affect the outcome of the case).

As best we can discern, Applicant appears to contend that, due to inaccuracies and omissions in the FORM, the Judge was not aware of important facts in his case. His brief contains court records that reflect various criminal charges were expunged from his record. Those court records are in the FORM and were addressed in the Judge’s decision. None of Applicant’s arguments are either sufficient to rebut the presumption that the Judge considered all the evidence in the record or enough to demonstrate 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 also notes that an adverse decision will have a negative impact on his family, but such a circumstance is not a relevant consideration in assessing an individual’s security clearance eligibility. *See, e.g.*, ISCR Case No. 17-03024 at 3 (App. Bd. Jan. 9, 2020).

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 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: Jennifer I. Goldstein
Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board