



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

Date: July 11, 2024

_____)	
In the matter of:)	
)	
)	
-----)	ISCR Case No. 23-01592
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Mendez, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 29, 2023, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline E (Personal Conduct) and Guideline F (Financial Considerations) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision based on the written record, without a hearing. The Government submitted a File of Relevant Material (FORM) containing the entire record and the Government’s argument. Applicant filed a reply. On April 30, 2024, Defense Office of Hearings and Appeals Administrative Judge Marc E. Curry denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged under Guideline E that, in 1989, Applicant was charged by the military with misuse and abuse of privileges; allowing an unauthorized person to operate a military registered vehicle overseas; crossing an international border without appropriate travel documents; and failure to obey an order. In December 1989, Applicant fled to a foreign country and remained absent without leave (AWOL) from the U.S. Army. He returned to the U.S. in 1996 and was

separated from the Army with an Other Than Honorable discharge. Under Guideline F, Applicant is alleged to have 10 delinquent debts. Applicant admitted all of the SOR allegations, and the Judge found against him on the Guideline E allegation and all but one Guideline F allegation.

On appeal, Applicant argues the Judge decided the case citing “‘by the book’ bureaucratic reasonings and process,” and he requests a review based on “factors and objective national security interests and on realistic potential” on how he could contribute his strengths, abilities, and experience. Consistent with the following, we affirm.

Judge’s Findings of Fact and Analysis

Applicant is in his early-60s. He immigrated to the United States in 1983 and became a naturalized citizen in 1988. He served in the U.S. Army from 1984 to 1988 and received an honorable discharge. He then joined the Army National Guard in 1988, and while serving in Germany, requested travel to his home country to visit family. His request was denied because he did not meet the deadline for requesting travel to a communist country. Applicant then requested leave to travel within Germany. The leave was approved, but Applicant instead went to his home country in his personal vehicle and left it with his brother in that country without authorization. While these activities were being investigated, Applicant failed to report for duty, left the base, and was AWOL in his home country for seven years. In 1996, he was administratively separated from the Army National Guard with an Other Than Honorable discharge. The Judge found that Applicant’s period of AWOL was a “profound breach of duty” that was compounded by his lying to his command about his travel destination.

Applicant incurred debts totaling about \$81,000 that he attributes to charges to credit cards during the COVID pandemic because of extended unemployment. The Judge found that he satisfied one debt but failed to contact creditors or make reasonable payment or settlement plans for the remaining nine debts.

Discussion

On appeal, Applicant does not allege the Judge committed harmful error but requests a *de novo* review. Disagreement with the Judge’s weighing of the evidence or an ability to argue for a different interpretation of the evidence is not sufficient to conclude that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *E.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). The Appeal Board does not review cases *de novo*. The Board’s authority to review a case is limited to cases in which the appealing party has alleged the Judge committed harmful error. Directive ¶ E3.1.32. Because Applicant has not alleged such a harmful error, the decision of the Judge denying Applicant security clearance eligibility is sustainable.

Our review of the record reflects that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, which 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). “Any doubt

concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” AG ¶ 2(b).

Order

The decision is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Gregg A. Cervi

Gregg A. Cervi
Administrative Judge
Member, Appeal Board

Signed: James B. Norman

James B. Norman
Administrative Judge
Member, Appeal Board