

KEYWORD: Guideline E; Guideline F

DIGEST: Applicant cites to his having held a clearance while in the military and to other evidence that, he believes, shows that he is worthy of a clearance. Applicant’s argument is not enough to rebut the presumption that the Judge considered all the evidence in the record or that he mis-weighed the evidence. There is no reason to believe that Applicant’s failure to have responded to the FORM was due to inadequate notice of his right to submit evidence. Adverse decision affirmed.

CASENO: 14-01567.a1

DATE: 04/10/2015

DATE: April 10, 2015

In Re:	)	
	)	
-----	)	ISCR Case No. 14-01567
	)	
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 June 4, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) and 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 January 15, 2015, after considering the

record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert E. Coacher 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's findings of fact contained errors; whether Applicant was denied due process; and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline F are not at issue in this appeal. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Applicant has worked for his current employer, a Federal contractor, since late 2013. A high school graduate, he served in the U.S. military from 1991 through 1993, receiving an honorable discharge. He has held a security clearance in the past. In 2009, he used a company credit card for personal expenses. He was warned that this was not a proper use of the card, and the company revoked it. In 2013, however, his employer required him to apply for a new card, due to his requirement for official travel. Applicant made \$8,000 in official travel-related expenditures. However, he used the reimbursement to pay personal expenses rather than his travel card bill. The card-issuing company cancelled his card due to non-payment, and Applicant was fired from his job.

### **The Judge's Analysis**

The Judge cleared Applicant of the Guideline F allegations. However, he found that Applicant had not mitigated the concerns arising from his misuse of the company travel card. He stated that Applicant's misconduct was not minor and that it casts doubt on Applicant's trustworthiness, reliability, and good judgment. In the whole-person analysis, the Judge cited to evidence that Applicant had achieved financial stability. However, he stated that Applicant's evidence was not enough to remove concerns about his repeated credit card misuse.

### **Discussion**

Applicant contends that the Judge's findings of fact contain errors. Some of the alleged errors pertain to the Guideline F allegations that the Judge found in Applicant's favor. Concerning Guideline E, Applicant argues that the revocation of his travel card was at his request rather than having been the credit card company's unilateral decision. The Judge did not discuss or even cite to the challenged finding in his analysis. Even if it is erroneous it did not likely affect the outcome of the case. Therefore, it is harmless. We conclude that the Judge's material findings of security concern are based upon "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1.

Applicant cites to his having held a clearance while in the military and to other evidence that, he believes, shows that he is worthy of a clearance. Applicant's argument is not enough to rebut the presumption that the Judge considered all of the evidence in the record or that he mis-weighed the evidence. *See, e.g.*, ISCR Case No. 12-05359 at 3 (App. Bd. June 7, 2014). Applicant contends that the Judge failed properly to apply the whole-person concept. He argues that his record as a whole is favorable and that the Judge's decision paid too much attention to the negative aspects of his

circumstances. This argument, however, is merely a challenge to the Judge’s weighing of the evidence. We conclude that the Judge’s whole-person analysis complies with the requirements of the Directive, in that he evaluated Applicant’s security-significant conduct in light of that totality of the record evidence. *See, e.g.*, ISCR Case No. 12-01578 at 5 (App. Bd. Sep. 24, 2014). Applicant’s appeal brief contains evidence from outside the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant argues that he could not “present any evidence not on the Statement of Reasons.” Appeal Brief at 2. The cover letter accompanying the SOR advised him that he “may provide additional information that explains, refutes, extenuates, or mitigates the information set forth in the [SOR]. Doing this may provide a basis for favorable resolution of your case without the need for further proceedings.” Letter, dated June 4, 2014. The File of Relevant Material (FORM) provided Applicant with notice of his right to submit “objections, rebuttal, extenuation, mitigation, or explanation, as appropriate.” The cover letter accompanying the FORM advised Applicant of his right to “submit any material” that he wanted the Judge to consider. Letter, dated October 17, 2014. Moreover, DOHA provided Applicant with a copy of the Directive, which sets forth an applicant’s right to present documentary evidence in response to the FORM. Directive ¶ E3.1.7. There is no reason to believe that Applicant’s failure to have responded to the FORM was due to inadequate notice of his right to submit evidence. Applicant was not denied the due process rights afforded by the Directive.

The Judge examined the relevant data 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: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board