

KEYWORD: Guideline H; Guideline J

DIGEST: The Directive does not authorize the Appeal Board to hold oral arguments. Adverse decision affirmed.

CASENO: 14-05240.a1

DATE: 08/04/2016

DATE: August 4, 2016

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| In Re: ----- Applicant for Security Clearance |))))))) | ISCR Case No. 14-05240 |
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APPEAL BOARD SUMMARY DISPOSITION

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 18, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement) and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On May 25, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant’s appeal brief contains no assertion of harmful error on the part of the Judge. Specifically, he states that he is “not saying the evidence of [his] past was false or that the process was flawed, but that there is more than what was presented.” Appeal Brief at 1. In support of his argument, he offers new evidence in the form a narrative statement about his current work and family situation, as well as documents such as character reference letters and an award nomination, that postdate the Judge’s decision in this case. He also requests that he be “granted an appeal to present his case in person.” *Id.*

Applicant had the opportunity to elect a hearing. Instead, he requested that his case be decided on the written record and filed a documentary response to the government’s File of Relevant Material (FORM). Nothing in the record below indicates that Applicant was effectively precluded from presenting evidence on his own behalf, and his failure to take better advantage of his rights under the Directive does not constitute a denial of those rights. *See, e.g.*, ISCR Case No. 01-20579 at 3 (App. Bd. Apr. 14, 2004). The Appeal Board’s authority is derived from the Directive, which does not authorize it to hold oral arguments. *See, e.g.*, ISCR Case No. 09-01321 at 2 (App. Bd. Feb. 17, 2010).

The Board does not review a case *de novo* and it cannot consider new evidence on appeal. *See* Directive ¶ E3.1.29. Its authority to review a case is limited to cases in which the appealing party has alleged the Judge committed harmful error. Applicant has not made an allegation of harmful error on the part of the Judge. Therefore, the decision of the Judge is AFFIRMED.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairperson, Appeal Board

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

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board