

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant claims that the Judge's decision relied on a the whole-person concept and that was the first time the concept was mentioned in the process. Applicant received the Directive which discusses the whole-person. Record evidence indicates that Applicant understood and relied on the whole-person concept in the proceedings below. Adverse decision affirmed.

CASENO: 08-03497.a1

DATE: 03/19/2010

DATE: March 19, 2010

In Re:)	
)	
-----)	ISCR Case No. 08-03497
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 19, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested that the case be decided on the written record. On January 21, 2009, after the close of the record, 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 raises the issue of whether the Judge’s decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable decision.

The Judge found that Applicant had financial difficulties but that those problems had been mitigated under Guideline F. Regarding Guideline E, the Judge found that Applicant intentionally falsified his SF 86 when he failed to divulge his delinquent debts. The Judge concluded that this deliberate falsehood was not mitigated.

Applicant argues that at no time during the entire process of application for a security clearance was the “whole-person” concept ever mentioned or discussed. Applicant claims that if the whole-person concept was used by the Judge “to reach and base his decision” regarding his personal conduct, then he has the right to appeal the decision. Applicant also complains that DOHA never sought on its own, any favorable information regarding his character and integrity. Applicant fails to demonstrate error on the part of the Judge.

Prior to the submission of the case file to the Judge, Applicant received instructions regarding the case. He also received a copy of Department of Defense Directive 5220.6. Paragraph 2(a) gives a full and detailed description of the whole-person concept. Applicant was therefore on notice as to the whole-person concept. There is no right to any additional instruction or description from DOHA regarding the whole-person concept. There is record evidence which suggests Applicant understood and relied upon the whole-person concept, namely, his response to the SOR in which he discussed his service history and his past protection of sensitive information. He again submitted such material in response to the file of relevant material submitted by the government. Moreover, Applicant has failed to articulate how he was prejudiced by the lack of any further description by DOHA of the whole-person concept. Regarding the submission of favorable evidence, DOHA has no duty to present such evidence. Rather, through the receipt of Department of Defense Directive 5220.6, Applicant was informed prior to the submission of the case file to the Judge of the requirement to submit evidence to rebut, explain, extenuate, or mitigate facts admitted by Applicant or proven by Department Counsel. Directive ¶E3.1.15. As indicated earlier in this paragraph, Applicant did, in fact, avail himself of the opportunity to submit matters in his own behalf for the

Judge's consideration. Applicant fails to articulate how he was denied due process or how any additional initiatives on the part of DOHA would have prevented any supposed denial.

Applicant's appeal submission contains documents of an evidentiary nature that were not made part of the record below. The Board cannot receive or consider new evidence submitted on appeal. Directive, ¶E3.1.29.

Applicant has failed to establish error below. Accordingly, the Judge's unfavorable security clearance decision is sustainable.

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

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

Signed: Jeffery D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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