

KEYWORD: Guideline F

DIGEST: Applicant was properly advised of his right to submit a response to the File of Relevant Material. Applicant was not denied the due process afforded by the Directive. Adverse decision affirmed.

CASE NO: 11-12885.a1

DATE: 09/17/2013

DATE: September 17, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-12885
)	
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 February 22, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Because Applicant did not request a hearing the case was processed on the written record, in accordance with Directive ¶ E3.1.7. On June 27, 2013, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Arthur E. Marshall, Jr., 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 he was denied due process and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision.

The Judge's Findings of Fact

Applicant has worked for a Defense contractor since 2009. He served in the Navy from 1982 until 1985, when he was administratively discharged. Applicant is divorced with two grown offspring.

Applicant has several delinquent debts, including three state tax liens and an account from an automobile repossession. Applicant advised that many of his debts had been satisfied or were subject to repayment agreements, but he provided no corroboration. He denied responsibility for some of the debts alleged in the SOR, but he provided no evidence that he had ever disputed them. Moreover, in an interview, Applicant attributed three of these challenged debts to a dating service, a telecommunication provider, and utilities bills. The Judge found that Applicant had "provided scant information" that would explain his financial circumstances. Decision at 2. Applicant's personal financial statement shows a monthly net remainder of about \$1,137. Applicant provided no response to the File of Relevant Material (FORM).

The Judge's Analysis

The Judge concluded that Applicant's finances raised security concerns under Guideline F. In evaluating Applicant's case for mitigation, he noted the absence of corroboration for Applicant's claims of repayment. He also stated that Applicant had provided no evidence that his problems had resulted from causes outside his control and cited to evidence that Applicant had pursued Chapter 7 bankruptcy in 2003. He concluded that Applicant's financial problems were ongoing and unresolved and that Applicant had failed to demonstrate responsible action in regard to his debts. In the whole-person analysis, the Judge commented on Applicant's military discharge, his family circumstances, and the paucity of evidence showing the reason for Applicant's financial problems and/or his efforts to resolve or dispute them. The Judge concluded that, in light of this paucity of evidence, Applicant had failed to meet his burden of persuasion as to mitigation.

Discussion

Applicant cites to references in the Decision to his failure to respond to the FORM. He states that he did not have time to reply, because the FORM was sent to his employer's corporate office in the U.S. and from there to Applicant's home in Europe, where he was performing his duties. He argues that the paucity of evidence in his case was due to the "short turnaround" time he had in which to prepare his response.

As stated above, Applicant did not request a hearing. Accordingly, his case was processed by means of the written record. DOHA mailed Applicant a copy of the FORM on April 18, 2013. An accompanying letter advised Applicant that he had 30 days *from receipt* to submit objections or

additional information for the Judge’s consideration. This advice complied with Directive ¶ E3.1.7. The letter advised Applicant that if he did not respond, his case would be assigned to the Judge for a decision based solely on the FORM. DOHA also provided Applicant a copy of the Directive. Applicant acknowledged receipt of the FORM on May 6, 2013. Applicant neither responded to the FORM nor requested an extension of time in which to do so. Under the circumstances, there is no reason to believe that Applicant was denied his full thirty days in which to respond or that he was not properly advised of his rights. There is no basis in the record to conclude that Applicant was denied the due process afforded by the Directive. *See, e.g.*, ISCR Case No. 10-03743 at 2 (App. Bd. Jun. 24, 2011).

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: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board