

KEYWORD: Guideline F

DIGEST: Applicant submitted documents after the date which the Judge had designated for closure of the record. The admitted them the documents into the record. Adverse decision affirmed.

CASENO: 14-02371.a1

DATE: 06/08/2016

DATE: June 8, 2016

_____)	
In Re:)	
)	
-----)	ISCR Case No. 14-02371
)	
)	
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 August 7, 2014, 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). Applicant requested a hearing. On March 18, 2016, after the close of the record, Defense Office of Hearings and Appeals Administrative Judge Nichole L. Noel denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge considered all the evidence in the case and whether the Judge’s adverse clearance decision is arbitrary, capricious or contrary to law. Consistent with the following, we affirm the Judge’s decision.

Applicant contends that “proper legal procedure was not carried out” because the Judge failed to consider documentary evidence that Applicant had submitted to the Judge and Department Counsel subsequent to the hearing. This argument does not demonstrate error on the part of the Judge.

Applicant’s hearing was held on August 27, 2015. At the close of the hearing, the Judge left the record open until October 30, 2015, for the Applicant to submit any additional documentary evidence. Tr. at 81. On December 4, 2015, Applicant submitted three additional documentary exhibits—letters from Applicant’s accountant to his state tax board, also dated December 4, 2015. The Judge was not obligated to consider those letters because they were submitted more than a month after the close of the record. Nevertheless, the Judge admitted the letters into evidence and considered them jointly as Applicant’s Exhibit K. Decision at 2. Applicant has not rebutted the presumption that the Judge considered all the evidence in the record. *See, e.g.*, ISCR Case No. 12-05959 at 2 (App. Bd. Apr. 6, 2016).

Applicant also asks that the decision in his case be “delayed” so that he can submit eight documents that he lists in his Appeal Brief. Seven of those documents are items that are already part of the case record.¹ The eighth document is a letter dated May 2, 2016, subsequent to the Judge’s March 18, 2016 decision. The Board cannot consider this new evidence on appeal. *See* Directive ¶ E3.1.29.

After reviewing the record, the Board concludes that 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.”

¹The Statement of Reasons, Answer, Hearing Transcript, Decision, Notice of Appeal, Appeal Board letter, and Applicant’s Brief.

Order

The decision of the Judge is AFFIRMED.

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

Signed: Catherine Engstrom
Catherine M. Engstrom
Administrative Judge
Member, Appeal Board

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