

KEYWORD: Guideline H; Guideline E; Guyideline B

DIGEST: Considering all the circumstances, the Board concludes Applicant waived his right to a hearing and received a reasonable opportunity to respond to the FORM, including the option to present additional evidence for consideration in his case. Absent a showing of factual or legal error that affects a party's right to present evidence in the proceeding below, a party does not have the right to have a second chance at presenting his or her case before an administrative judge. Adverse decision affirmed.

CASENO: 14-02730.a1

DATE: 06/24/2016

DATE: June 24, 2016

In Re:)	
)	
-----)	ISCR Case No. 14-02730
)	
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 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), Guideline E (Personal Conduct), and Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On April 21, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Gregg A. Cervi denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant’s appeal brief contains no assertion of harmful error on the part of the Judge. Rather, it contains a request for a hearing. Applicant notes that, when he responded to the SOR, he was scheduled to be overseas for an extended period, and it would have been impractical for him to return for a hearing. He also pointed out that the Judge commented in the decision that he was unable to evaluate Applicant’s credibility and demeanor without a hearing. Applicant now believes, if he was provided an opportunity to appear before the Judge, he could establish his credibility and obtain a favorable decision.

After requesting a decision on the written record, Applicant received a copy of Department Counsel’s File of Relevant Material (FORM) and was given an opportunity to respond to the FORM and submit additional matters for the Judge to consider. He submitted a response to the FORM that included a letter of recommendation from his employer. Considering all the circumstances, the Board concludes Applicant waived his right to a hearing and received a reasonable opportunity to respond to the FORM, including the option to present additional evidence for consideration in his case. Absent a showing of factual or legal error that affects a party’s right to present evidence in the proceeding below, a party does not have the right to have a second chance at presenting his or her case before an administrative judge. *See, e.g.*, ISCR Case No. 02-20403 at 3 (App. Bd. Apr. 7, 2003); ISCR Case No. 03-15214 at 3 (App. Bd. Oct. 21, 2005). Applicant has not demonstrated error below and is not entitled to a hearing just so he can have another opportunity to present his case.

Order

The Decision is **AFFIRMED**.

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

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

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