

KEYWORD: Guideline F

DIGEST: The Directive does not allow us to consider the impact of an unfavorable decision. Adverse decision affirmed.

CASENO: 14-04959.a1

DATE: 04/06/2016

DATE: April 6, 2016

In Re:)	
)	
-----)	ISCR Case No. 14-04959
)	
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 January 16, 2015, 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 decision on the written record. On February 19, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr., denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

As a preliminary matter, Applicant has raised an issue of due process. In pressing her argument, she includes matters from outside the record, which we are generally precluded from considering. Directive ¶ E3.1.29. However, we will consider new evidence insofar as it bears upon threshold questions such as jurisdiction or due process. *See, e.g.*, ISCR Case No. 14-00812 at 2 (App. Bd. Jul. 8, 2015).

Applicant states that she mailed documents to a named official at the DoD Consolidated Adjudications Facility (CAF) regarding her efforts at debt repayment. Applicant states that, believing that these documents would become part of the administrative record, she provided no further information upon receipt of the SOR.¹ However, she states that they were not included in the record, with the result that the Judge made his final decision without reference to all of her evidence.

We have examined Applicant’s argument in light of the record as a whole. She was sent a copy of the File of Relevant Material (FORM), which contained the documentary evidence upon which the Government intended to rely in its case in chief. The FORM was accompanied by a cover letter from a DOHA official and a copy of the Directive. On July 16, 2015, Applicant acknowledged receipt of these documents. Both the FORM and the cover letter advised her of her right to make a documentary response to the FORM. The Directive contains such guidance as well. In the FORM, Department Counsel advised Applicant that she had a right to submit “a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate.” The cover letter stated that she could provide “any additional information” that she wanted the Judge to consider. Cover Letter, dated July 9, 2015. A memorandum, dated November 18, 2015, and signed on behalf of the DOHA Director, notes that Applicant did not submit additional evidence.

Under the facts of this case, we conclude that Applicant has not made a *prima facie* showing that she submitted documents other than those that were attached to her SOR answer and that were included in the FORM. Indeed, several of the documents that she has attached to her Appeal Brief actually post-date the Judge’s decision. Although Applicant may believe that the FORM did not contain all of the evidence that she would like the Judge to have considered, she was provided with a reasonable opportunity to supplement the record and declined to do so. Accordingly, we conclude that Applicant was not denied her right to due process.

¹The record includes Applicant’s answer to the SOR, followed by documents. It appears that she did provide about twenty pages of evidence in support of her SOR answer, despite her contrary assertion in the Appeal Brief. We construe her brief to mean that she submitted no further evidence after having received the FORM.

Applicant states that her continued employment is contingent upon her maintaining a clearance. However, the Directive does not permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 14-04202 at 4 (App. Bd. Dec. 24, 2015). To the extent that Applicant's inclusion of some documents already in the record constitutes an argument that the Judge did not consider them, we conclude that she has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-06093 at 3 (App. Bd. Dec. 4, 2015). Beyond this, Applicant's brief does not make an assertion of harmful error.

Order

The Decision is **AFFIRMED**.

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