

KEYWORD: Guideline F

DIGEST: Applicant's assertion that he believed his security officer had submitted his documentation does not demonstrate that he was denied due process in light of the record as a whole. Adverse decision affirmed.

CASENO: 14-05920.a1

DATE: 01/08/2016

DATE: January 8, 2016

_____)	
In Re:)	
)	
-----)	ISCR Case No. 14-05920
)	
)	
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 22, 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 October 30, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Marc E. Curry 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 Findings of Fact

In 2005, Applicant and his wife purchased a house for \$440,000, financing the purchase through a mortgage. They later took out a home equity line of credit (HELOC). Subsequently, Applicant became unemployed for seven months, and he also divorced. Applicant fell behind on his mortgage payments as well as on other debts.

Applicant thought about selling his house but it had depreciated by \$200,000 since he bought it. He hired an attorney, who helped him execute a voluntary foreclosure. The foreclosure sale resulted in a deficiency of \$160,000. Applicant’s HELOC was not included in this transaction. He negotiated a settlement agreement whereby he will pay \$200 a month, though as of the date of the SOR he had not received a copy of this agreement. Applicant disputes one of the SOR debts and claims that he has paid off others. He provided no corroboration for this assertion.

The Judge’s Analysis

The Judge concluded that Applicant’s debts resulted from circumstances beyond his control—unemployment, divorce, and his inability to sell his house. He noted that Applicant consulted with an attorney in an effort to resolve this debts. However, he stated that Applicant had provided no additional evidence in support of his claims to have been addressing his debts. The Judge concluded, therefore, that Applicant had failed to mitigate the concerns arising from his financial problems.

Discussion

Applicant states that he thought that his facility security officer had submitted all of his documentation. He states that he believed that “the packet I received was the copies of what was to be submitted.” He also states that no one advised him that it was best to present his case at a hearing. Appeal Brief at 1. Applicant’s argument asserts 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 questions of jurisdiction or due process. *See, e.g.*, ISCR Case No. 14-00812 at 2 (App. Bd. Jul. 8, 2015).

The record contains a copy of a document that DOHA prepared and sent to Applicant in conjunction with the SOR, whereby Applicant made his election as to forum. Applicant checked the block requesting a decision on the written record. This document stated that Applicant would have an opportunity to provide written evidence for the Judge's consideration.

Subsequently, Department Counsel sent Applicant the File of Relevant Material (FORM). The FORM included guidance to Applicant that the record as it then stood was not sufficient to mitigate the concerns in his case. It stated, among other things, that Applicant had 30 days

in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information within 30 days of receipt of this letter, your case will be assigned to an Administrative Judge for a determination base solely on this FORM.

DOHA officials provided similar guidance in a cover letter, dated May 20, 2015, that accompanied the FORM. This letter advised that Applicant could submit "any material you wish the Administrative Judge to consider" within 30 days of receipt. DOHA also provided Applicant with a copy of the Directive, which contains a detailed explanation of an applicant's rights and responsibilities.

Under the circumstances, Applicant's failure to have provided a written response to the FORM cannot fairly be attributed to an absence of clear guidance regarding his rights. Neither has he provided a reason to believe that he submitted documents that did not make it into the record.¹ Beyond this, we are unable to determine with any degree of certitude exactly what error that Applicant is raising. Therefore, any argument beyond those addressed above fails for lack of specificity. *See, e.g.*, ISCR Case No. 09-06691 at 3 (App. Bd. May 16, 2011). Although Applicant may now be dissatisfied with his choice of forum, there is nothing in the record or in his appeal brief that would persuade a reasonable person that his election of a decision on the written record was other than knowing and intelligent. Applicant was not denied the due process afforded by the Directive.

Applicant's brief draws our attention to documents that were included in the record. Applicant's brief is not enough to rebut the presumption that the Judge considered all of the evidence. *See, e.g.*, ISCR Case No. 14-06093 at 3 (App. Bd. Dec. 4, 2015). Neither is it sufficient to show that the Judge mis-weighed the evidence.

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

¹Some of the documents that Applicant has attached to his appeal brief post-date his deadline to respond to the FORM and, in some cases, the Judge's Decision itself.

concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billet

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board