

KEYWORD: Guideline F

DIGEST: Statements by the investigator in an interview summary are not the interviewer's opinion. They reflect the answers given to the interviewer's questions. Furthermore, even if they did reflect the interviewer's opinion, that would not bind DoD. Adverse decision affirmed.

CASENO: 15-01099.a1

DATE: 12/15/2016

DATE: December 15, 2016

In Re:	)	
	)	
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	)	ISCR Case No. 15-01099
	)	
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 28, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct), and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 21, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Juan J. Rivera denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

Applicant is a 57-year-old employee of a Federal contractor. He was hired by his current employer in 2013. In November 2009, he was convicted in a U.S. District Court of conspiracy to commit wire fraud. The criminal charge reflected that he conspired with others to knowingly, and with the intent to defraud, make materially false statements over the telephone to individuals interested in becoming investors in a company. He was sentenced to 42 months imprisonment and served 32 months until December 2012. After his release, he was placed on supervised probation until April 2016. He is jointly and severally liable with his co-accused to pay over \$1,200,000 in restitution. He is required to pay ten percent of his gross income toward the restitution debt. He has been making those payments and maintaining his financial responsibility.

In his appeal brief, Applicant contends that the Judge erred in finding that his criminal conduct occurred from 2003 through 2009. The criminal charge supports Applicant’s claim that his criminal conduct occurred during a much shorter period, *i.e.*, from about 2003 to about September 2005. However, considering the nature and seriousness of Applicant’s criminal conduct and that his probation ended in 2016, we find that the Judge’s error was harmless in that it is not likely to have affected the outcome of the decision. *See, e.g.*, ISCR Case No. 08-07528 at 2 (Dec. 29, 2009).

Applicant argues that he has always been on time with his scheduled restitution payments. He further contends the Government could garnish his wages if he did not make the payments, and there is no reason to believe that the financial restitution could ever be used to coerce or influence him. In the decision, the Judge noted that Applicant has been making his required restitution payments. Applicant’s arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record, nor are they sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-01284 at 3 (App. Bd. Apr. 6, 2015).

Applicant further argues that the background investigator reported that there was nothing in Applicant’s background, lifestyle, or association, to include his offense and incarceration, that could be used for blackmail or coercion. As the Appeal Board has previously noted, such statements in a clearance interview summary represent the applicant’s answers to the interviewer’s questions, not the interviewer’s opinion as to the applicant’s worthiness for a clearance. In any event, even if an

investigator provided such an opinion, it would not bind the DoD in its evaluation of an applicant's case. *See, e.g.*, ISCR Case No. 14-03069 at 3 (App. Bd. Jul. 30, 2015).

Applicant has failed to identify any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the 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: Michael Ra'anan  
Michael Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

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

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