

KEYWORD: Guideline F

DIGEST: Applicant’s explanation about his period of underemployment as well as his explanations about other matters that he is providing for the first time in his appeal constitute new evidence that the Appeal Board is prohibited from considering. Adverse decision affirmed.

CASENO: 14-05996.a1

DATE: 11/3/2017

DATE: November 3, 2017

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In Re:)	
-----)	ISCR Case No. 14-05996
)	
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 19, 2016, 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 August 16, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello, 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact and Analysis

Applicant retired from the military in 2008, worked for different Federal contractors from 2008 to 2014, and was unemployed from November 2014 to September 2015 before he began working for his present employer. He claimed that a charged-off second mortgage was current, but provided no documentary evidence to corroborate a repayment plan or payments. He also claimed he paid another debt and planned to resolve other debts, but provided no documentary proof. He did not provide information about his current finances. There is insufficient evidence to conclude that it is unlikely similar problems will recur. Even though his lengthy period of unemployment was a condition beyond his control, the Judge could not conclude Applicant acted responsibly under the circumstances due to the lack of evidence corroborating his assertions.

Discussion

Applicant contends that the Judge erred in her findings of fact because she failed to mention his underemployment from October 2015 to February 2016. We conclude the Judge did not err in this regard. Applicant's security clearance application dated December 2015 reflects that he occupied a full-time employment position "From (Month/Year): **09/2015** To (Month/Year): **Present**" and the record contains no evidence that he was underemployed during the period in question. Applicant's explanation about his period of underemployment as well as his explanations about other matters that he is providing for the first time in his appeal constitute new evidence that the Appeal Board is prohibited from considering. Directive ¶ E3.1.29.

Applicant also contends that he was not afforded enough time to obtain information to respond to Department Counsel's File of Relevant Material (FORM). On October 7, 2016, Applicant received a copy of the FORM and was given 30 days from its receipt to submit any objections or additional information that he wished considered. Applicant neither submitted a response to the FORM nor requested additional time for submitting a response. In his appeal brief, Applicant did not identify any particular document that he could not obtain during the 30-day period for submitting a response. From our review of the record, we conclude that Applicant has failed to establish a *prima facie* case that he was denied due process. *See, e.g.*, ISCR Case No. 15-02933 at 2 (App. Bd. Sep. 23, 2016).

Applicant further argues the Judge erred in finding that he told an investigator in 2012 that he was financially stable and was working with a lawyer to rectify his finances. He claims he told the investigator that he was working with the lawyer regarding an issue with a mortgage company and he was contacting creditors on his own to work out payment arrangement. We note the Judge's finding in question is taken almost verbatim from the results of Applicant's interview with an investigator. Applicant was provided a copy of the results of that interview with the FORM and was given an opportunity to submit objections or comments regarding it, but he did not do so. We conclude the Judge's challenged finding is supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.

Directive ¶ E3.1.32.1.

The balance of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence. The presence of some mitigating evidence does not alone compel the Judge to make a favorable trustworthiness decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 15-01652 at 2 (App. Bd. Jul. 7, 2017).

The Judge examined the relevant evidence 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, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility 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: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board