

KEYWORD: Guideline F; Guideline E

DIGEST: We find nothing in the record, or in Applicant’s appeal brief, to show or intimate that Applicant was denied a fair opportunity to present his case for mitigation. Adverse decision affirmed.

CASENO: 15-02955.a1

DATE: 09/15/2017

DATE: September 15, 2017

_____)	
In Re:)	
-----)	
)	ISCR Case No. 15-02955
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Shane C. Brengle, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 17, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On May 12, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein 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 Applicant was denied due process and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

The Judge made the following findings pertinent to the issues raised on appeal: Applicant served in the military from 1992 until 2012. Divorced and remarried, he has a child and two stepchildren. Applicant's SOR lists numerous collection and/or charged-off accounts. Although he claimed to have resolved one of them, he did not provide corroboration. Applicant submitted no evidence of actions taken to pay his debts, nor did he provide evidence of a budget, earnings, or financial counseling.

The Judge's Analysis

Though noting evidence that Applicant attributed his financial problems to his ex-wife and their divorce, he did not show that he had acted responsibly in regard to this misfortune. The Judge reiterated that Applicant had not shown evidence of financial counseling, nor had he provided a reason to dispute the legitimacy of any of his debts. She stated that Applicant's failure to pay his debts demonstrates a lack of rehabilitation.

Discussion

Applicant contends that he was denied due process.¹ He states that he did not have enough time to respond to the allegations; that his deployment impaired his ability to submit evidence in mitigation; and that he did not have the same opportunities available to Applicants who have chosen a hearing. In making his arguments, Applicant asserts matters from outside the record. We are precluded from considering new evidence on appeal. However, we will consider such evidence on threshold issues such as due process or jurisdiction. *See, e.g.*, ISCR Case No. 15-04003 at 2 (App. Bd. May 25, 2017).

We find nothing in the record, or in Applicant's appeal brief, to show or intimate that Applicant was denied a fair opportunity to present his case for mitigation. As Department Counsel argues in the Reply Brief, there is no apparent reason that Applicant could not have chosen a hearing, whether by video-teleconference or in person when back in the U.S. Moreover, there is nothing in the record to show that Applicant sought additional time from the Judge in which to obtain and present mitigating evidence or that he addressed any concerns to his Facility Security Officer or other officials. Although it may not be surprising that Applicant is displeased with the Judge's decision in his case, we find no reason to believe that the adverse decision resulted from a

¹Applicant's brief cites to the regulations and cases of another Federal agency, which do not apply in DOHA proceedings.

denial of the due process that the Directive affords. *See, e.g.*, ISCR Case No. 00-0250 at 3 (App. Bd. Feb. 13, 2001).

The balance of Applicant's brief is a challenge to the Judge's weighing of the evidence. He presents new evidence in mitigation, which we cannot consider. Directive ¶ E3.1.29. Applicant's arguments are not 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. 15-08842 at 3 (App. Bd. Feb. 14, 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