

KEYWORD: Guideline F

DIGEST: Applicant also argues he “was discriminated against based on disability, which prevented him from the ability to respond to the FORM.” However, there is no evidence in the record that Applicant was disabled. It is unclear how the Judge could have discriminated against him on the basis of disability if the Judge was not aware of his claimed disability. Adverse decision affirmed.

CASENO: 15-03621.a1

DATE: 11/7/2017

DATE: November 7, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-03621
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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 25, 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 July 24, 2017, after considering the record, Defense Office of Hearings

and Appeals (DOHA) Administrative Judge Noreen A. Lynch denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant had four state and Federal unreleased tax liens totaling over \$240,000 and that he had a mortgage loan that was delinquent in the amount of about \$20,000. The Judge found against Applicant on each of the SOR allegations. In the appeal brief, Applicant does not challenge any of the Judge's findings of fact regarding the alleged debts.

Applicant contends that he was denied due process because he was not given a reasonable opportunity to respond to Department Counsel's File of Relevant Material (FORM). Specifically, he states that he was forced to take a leave of absence from work between April 2016 and February 2017 due to numerous health conditions, including high blood pressure, diabetes, and glaucoma. He claims that "he had no reasonable opportunity to even read the documents [*i.e.*, the FORM], much less to respond to them" during that ten month period. Appeal Brief at 6. He requests that his case be remanded to the Judge so that he could present evidence in his favor.

The record reflects that DOHA sent Applicant a copy of the FORM on May 4, 2016. He signed a document acknowledging that he received the FORM on July 8, 2016. On that date, he also was capable of printing his name, address, and telephone numbers on the receipt but neither requested an extension of time for responding to the FORM nor mentioned his health problems when submitting the receipt. He was given 30 days from receipt of the FORM to submit any objections or additional information that he wished the Judge to consider. He did not submit a response to the FORM.

The Appeal Board is generally prohibited from considering new evidence on appeal. Directive ¶ E3.1.29. However, we will consider new evidence insofar as it bears upon threshold issues such as due process. *See, e.g.*, ISCR Case No.14-06467 at 2 (App. Bd. Feb. 24, 2016). In this case, Applicant presented no evidence to corroborate that he had health conditions that precluded him from responding to the FORM. Additionally, he made no proffer as to what evidence he could present in response to the FORM. Furthermore, there is no evidence in the record that Applicant attempted to either communicate with DOHA or submit any matters during the four-month period between his recovery from his health problems and the Judge's issuance of the decision. Based on 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 also argues he "was discriminated against based on disability, which prevented him from the ability to respond to the FORM." Appeal Brief at 6. However, there is no evidence in the record that Applicant was disabled. It is unclear how the Judge could have discriminated against him on the basis of disability if the Judge was not aware of his claimed disability.

Applicant further contends that the Judge erred in her whole-person analysis. In doing so, he notes that he has been a trusted employee of the same company for about 15 years and has held a security clearance that entire time without any incidents. In her whole-person analysis, the Judge

addressed those matters. Applicant has failed to establish that the Judge’s whole-person analysis was arbitrary, capricious, or contrary to law.

Applicant has not identified any harmful error in the Judge’s decision. 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