KEYWORD: Guideline F

DIGEST: Applicant was notified that, should he choose a decision on the written record, Applicant would have an opportunity to present additional written or documentary evidence to the Judge. There is nothing in the record that would have led a reasonable person to believe that some additional in-person interview was upcoming. Indeed, Applicant's own SOR Answer, made it clear that he did not want or expect a hearing unless somebody else decided it was needed. Applicant was not denied the due process afforded by the Directive. Adverse decision affirmed.

CASENO:15-06494.a1

DATE: 10/05/2017

DATE: October 5, 2017

In Re:	)	
	)	
----------	)	ISCR Case No. 15-06494
	)	
	)	
Applicant for Security Clearance	)	
	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 21, 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 July 25, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr., 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

Applicant served in the military, retiring in 2012 as an E-8. In 2013 he began working for a Defense contractor, and he seeks to retain a clearance that he held during his military career. Applicant's SOR alleges numerous delinquent debts, totaling nearly $129,000. These debts include a past-due mortgage, a repossessed vehicle, a debt to the IRS, etc. When he had been confronted with his debts during his clearance interview, he told the investigator that he would research his debts and take steps to resolve them.

Applicant claimed to have resolved or to be resolving some of his debts, including the one to the IRS. However, he did not corroborate these claims. He also claimed to have been granted a modification of his mortgage and to be awaiting payment agreements for other debts. Applicant attributed his problems to expenses associated with a divorce, although he submitted insufficient information regarding the effect that it had on his finances. He also acknowledged his own "gross negligence and irresponsibility" in handling his finances. Decision at 2. He has documented no contacts with creditors since he submitted his security clearance application in early 2015.

The Judge's Analysis

The Judge stated that this case "is a failure of proof." Decision at 3. He noted that Applicant failed to provide documented proof of his claims of payment, payment plans, or of the effect that his divorce exerted on his debt problems. Although Applicant's divorce was a circumstance beyond his control, Applicant provided no details about it and he did not present evidence about when he began to address his problems.

Discussion

Applicant argues that he was not aware that he had to provide documentation to support his claims of debt resolution. He contends that the instructions accompanying the SOR were "vague and unclear." Appeal Brief at 3. He states that he thought that he would have an opportunity for a subsequent interview in order to provide additional information.

We find nothing in the SOR or the accompanying cover letter from the Consolidated Adjudications Facility (CAF) that misrepresented the rights and obligations of an applicant for a security clearance. The CAF cover letter explained that Applicant could elect a hearing or instead choose a decision on the written record. Should he elect the latter, Applicant would be entitled to provide a written response to the File of Relevant Material (FORM). Applicant included the following in his written Answer to the SOR: "I do not request a hearing before an Administrative Judge, I wish to have an Administrative Judge issue a decision based upon the administrative record and information I have provided and I am available if a hearing is deemed appropriate for further

questions."

Similarly, the FORM advised Applicant that he would have 30 days from its receipt "to submit a *documentary* response setting forth objections, rebuttal, extenuation, mitigation, or explanation as appropriate." (Emphasis added) It stated that, were Applicant to provide no such response, the case would be assigned to the Judge for a decision based solely on the FORM. The DOHA letter that accompanied the FORM provided similar information. Applicant also received a copy of the Directive, which explains that an applicant who chooses a decision on the written record is entitled to make "a *documentary* response" to the FORM. Directive ¶ E3.1.7. (Emphasis added)

The gist of these various communications is that, should he choose a decision on the written record, Applicant would have an opportunity to present additional written or documentary evidence to the Judge. There is nothing in the record that would have led a reasonable person to believe that some additional in-person interview was upcoming. Indeed, Applicant's own SOR Answer, quoted above, made it clear that he did not want or expect a hearing unless somebody else decided it was needed. Despite the clear guidance that Applicant received from the CAF and from DOHA, he presented nothing in response to the FORM. Given evidence that he has a college degree (SCA at 9) and that he attained senior NCO status in the military, there is no reason to believe that Applicant lacked the ability to understand the information that was presented to him about his rights and obligations. If Applicant was not aware that his response to the FORM was to have been in writing and that if he provided no such response the case would be decided based only upon the FORM and nothing else, the responsibility cannot fairly be laid at the feet of the CAF or of DOHA. Applicant was not denied the due process afforded by the Directive.

Applicant contends that the Judge did not consider evidence that supported his effort to receive a favorable decision, such as the effect of his marital problems on his financial condition and his claims about debt repayment. He also points out that he has held a clearance for many years without incident or concern. Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record or 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. 15-08711 at 3 (App. Bd. Aug. 24, 2017). Applicant cites to a Hearing Office case that he believes supports his effort to obtain a clearance. We give this case due consideration as persuasive authority. However, Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. ISCR Case No. 16-01941 at 2 (App. Bd. Aug. 9, 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