

KEYWORD: Guideline H

DIGEST: On this record, Applicant was not denied adequate notice of his rights to submit mitigating evidence under the Directive. Adverse decision affirmed.

CASENO: 15-07110.a1

DATE: 06/09/2017

DATE: June 9, 2017

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 15-07110
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**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 May 6, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision

on the written record. On March 20, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Eric H. Borgstrom denied Applicant's request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

On appeal, Applicant argues that he was denied due process because he "was not given the opportunity to submit" a statement of intent not to abuse drugs in the future. Applicant's argument lacks merit.

The record shows that Department Counsel advised Applicant that he had 30 days from receipt of the government's File of Relevant Material (FORM) to submit documents "setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate." Applicant's copy of the FORM was accompanied by a DOHA cover letter, which advised Applicant of his right to submit objections "or any additional information you wish to be considered." DOHA Letter, dated June 20, 2016. The DOHA official enclosed a copy of the Directive, which explains an applicant's rights in detail, and he advised Applicant how he could access the Directive on line. The enclosed Directive informed Applicant that a statement of intent not to abuse drugs in the future was evidence that a Judge could consider in evaluating an applicant's case in mitigation. *See* Directive, Enclosure 2, ¶ 26(b).<sup>1</sup> Applicant responded to the FORM by providing two documentary exhibits, which were forwarded by Department Counsel to the Judge without objection. Applicant was not denied adequate notice of his rights to submit mitigating evidence under the Directive. *See, e.g.*, ISCR Case No. 15-00092 at 2 (App. Bd. Apr. 8, 2016).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. It is an applicant's job to present evidence sufficient to mitigate the concerns raised in his or her case, and the applicant bears the ultimate burden of persuasion that he or she should be granted a clearance. Directive ¶ E3.1.15. The Judge's conclusion that Applicant had not met his burden of persuasion 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, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

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<sup>1</sup>Applicant also received a copy of the Directive along with the SOR.

**Order**

The decision is AFFIRMED.

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board

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

Signed: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board