

KEYWORD: Guideline F; Guideline G; Guideline E

DIGEST: We will consider new evidence insofar as it bears upon threshold issues such as due process. Applicant has not shown that he actually submitted documents to the Judge that were not received and considered. We find no reason to conclude that Applicant was denied the due process afforded by the Directive. Adverse decision affirmed.

CASENO: 16-01129.a1

DATE: 08/07/2017

DATE: August 7, 2017

In Re:)	
)	
-----)	ISCR Case No. 16-01129
)	
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 July 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), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 26, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Franciso

Mendez 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. The Judge's favorable findings under Guidelines G and E are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant left active duty with the U.S. military in 2008, after which he experienced unemployment. Shortly before and after his discharge, Applicant accumulated delinquent debts totaling about \$40,000. These debts were for such things as cell phone services, student loans, etc. In his clearance interview, Applicant promised to resolve his debts. However, he did nothing and testified that he had no good reason for his inaction. He has moved in with his girlfriend, and they are splitting expenses. Applicant states that his net monthly income is \$2,000. He claimed to have resolved two SOR debts, but he did not provide corroborating evidence.

Applicant has denied some of the SOR debts, contending that they were actually his father's, who has a similar name. Applicant hired a credit repair firm and provided post-hearing documents showing that some debts no longer appear on his credit reports. However, there is no evidence to show whether they were removed because they had been resolved or whether they simply dropped off the reports due to age.

The Judge's Analysis

The Judge noted that Applicant had admitted all of the delinquent debts in the SOR and that he had been aware of most of them for years. The Judge stated that Applicant had repeatedly promised to resolve his financial problems but waited until shortly before the hearing to start taking action. He concluded that Applicant had failed to present sufficient evidence to mitigate the concerns in the SOR. The Judge noted Applicant's military service, which included a lengthy deployment to Iraq, and that he has held a clearance for many years without incident or concern. However, he cited to Applicant's procrastination in even beginning to address his financial problems, despite having been aware of them for some time.

Discussion

Applicant has raised an issue of due process. In doing so, he refers to matters from outside the record, which we generally cannot consider. 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. 15-4003 at 2 (App. Bd. May 25, 2017).

The Judge held the record open after the hearing for Applicant to submit additional evidence. Tr. at 50. Applicant emailed additional documents to the Judge, which were included in the record as Applicant Exhibits (AE) A through D. AE A is a cover memo that describes the significance of the other submitted documents.

Applicant has attached to his brief documents that he contends he sent to the Judge but were not included in the record.¹ These are single-page reports from credit reporting agencies. There is nothing in the record to suggest that Applicant actually sent these reports to the Judge. For one thing, they are not mentioned in the cover memorandum admitted as AE A. In addition, one of them was generated on a date after the close of the record and, indeed, after the Judge issued the Decision. Applicant has not shown that he actually submitted documents to the Judge that were not received and considered. We find no reason to conclude that Applicant was denied the due process afforded by the Directive. *See, e.g.*, ISCR Case No. 15-04472 at 3 (App. Bd. Feb. 9, 2017).² Beyond this, Applicant cites to his military career and to his efforts to address his debts. These arguments are not enough 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 access to classified information will be resolved in favor of the national security.”

¹The attachments to Applicant’s brief also include the documents admitted as AE A through D. These documents pertained to the Guidelines G and E allegations that the Judge resolved in Applicant’s favor, along with his military discharge certificate.

²Furthermore, given the limited nature of the evidence and the timing of any disposition of indebtedness it is unlikely the evidence would have altered the Judge’s conclusions.

Order

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board