

KEYWORD: Guideline F and Guideline J

DIGEST: Applicant's assertions in his appeal only concern two debts alleged under Guideline F. This case also included formal findings against Applicant under Guideline J, and Applicant raised no issues regarding those findings. There is no presumption of error below. See, e.g., ISCR Case No. 04-08312 at 2 (App. Bd. July 14, 2005). As the Judge's adverse decision is fully supported by his formal findings under Guideline J, any errors involving matters relating to Guideline F are harmless.

CASENO: 15-02481.a1

DATE: 01/31/2017

DATE: January 31, 2017

_____)	
In Re:)	
)	
-----)	ISCR Case No. 15-02481
)	
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 November 6, 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 J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On November 10, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge David M. White denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged Applicant had 13 delinquent debts totaling about \$10,608, two domestic assault and battery arrests (2013 and 2014), and a conviction for a misdemeanor bogus check offense in 2008. In his findings, the Judge noted that Applicant was convicted of both domestic assault and battery offenses based on his guilty pleas. The Judge found against Applicant on all of the SOR allegations. He concluded that Applicant offered insufficient evidence to support any of the mitigating conditions. He specifically noted Applicant demonstrated no progress toward debt resolution, failing to resolve even a \$50 medical collection that had been delinquent since 2009.

In his appeal, Applicant contends that he told an investigator during an interview that he was making back child support payments and would soon be caught up. He also claimed he told the investigator that he would be going to court over another account and it would be resolved. He stated that resolution of these two debts would lower his indebtedness by about \$5,000, and he thought a hearing was not necessary because those two debts were being addressed.¹ In the decision, the Judge ruled the summary of Applicant’s interview with the Office of Personnel Management investigator was not admissible under Directive ¶ E3.1.20 because it was neither attested to nor adopted by Applicant. Even if the Judge had considered the interview, it is not likely that it would have changed the result. In the summary of the interview, Applicant is reported to have stated he was making child support payments, but they had stopped and he was expecting them to restart when collection responsibility was transferred from one state to another. The summary of the interview makes no reference to a court proceedings regarding the other debt.

Applicant’s assertions in his appeal only concern two debts alleged under Guideline F. This case also included formal findings against Applicant under Guideline J, and Applicant raised no issues regarding those findings. There is no presumption of error below. *See, e.g.*, ISCR Case No. 04-08312 at 2 (App. Bd. July 14, 2005). As the Judge’s adverse decision is fully supported by his formal findings under Guideline J, any errors involving matters relating to Guideline F are harmless.

¹ Applicant’s appeal brief contains documents that were not previously submitted to the Judge. Those documents constitute new evidence that the Appeal Board can neither receive nor consider. *See*, Directive ¶ E3,1.29.

Order

The decision of the Judge is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

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