KEYWORD: Guideline F

DIGEST: Directive ¶ E3.1.4 states, "To be entitled to a hearing, the applicant must specifically request a hearing in his or her answer." While Applicant made ambiguous statements about her forum choice, she never specifically requested a hearing. Accordingly, the Judge did not err in deciding the case on the written record. Adverse decision affirmed

CASENO: 16-03072.a1

DATE: 03/07/2018

DATE: March 07, 2018

In Re:	)	
	)	
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	)	
	)	
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 October 15, 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 November 28, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Gina L. Marine denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's unfavorable decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The SOR alleged eight delinquent debts, including past-due Federal taxes in the amount of about $45,000 for 2008 through 2012. In her Answer to the SOR, Applicant admitted the Federal tax debt and some other debts. The Judge found against Applicant on the Federal tax debt and in favor of her on the other debts. Acknowledging Applicant incurred the delinquent tax debt while residing overseas in a combat zone, the Judge concluded that Applicant failed to establish she acted responsibly in addressing that debt, noting those taxes became delinquent over a number of years and still remained unresolved five years later.

Applicant's appeal brief contains information that was not previously submitted to the Judge for consideration. For example, she provided an update about her recent efforts to resolve the tax debt. Such information constitutes new evidence that the Appeal Board cannot consider. *See*, Directive ¶ E3.1.29. Applicant also provided contact information for her tax consultant and for character references. The Board, however, has no authority to interview witnesses, conduct investigations, or make finding of fact. *See, e.g.*, ISCR Case No. 14-02394 at 3 (App. Bd. Aug. 17, 2015) (The Board has no fact-finding power.). *Compare e.g.*, ISCR Case No. 14-04092 at 2 (App. Bd. Oct. 22, 2015) (The Board has no authority to contact an applicant's employer.) and ISCR Case No 14-00434 at 3 (App. Bd. Jan. 20, 2015) ("A Judge has no authority to serve as an investigator.").

Applicant noted the Judge erred in making a finding about the date of her graduation from high school. This error, however, was harmless because it likely had no affect on the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013). Additionally, the Appeal Board need not address Applicant's arguments about debts for which the Judge found in her favor.

In her brief, Applicant also contends that she requested a decision on the written record because a hearing was not an option in that she was working overseas in a combat zone. In her response to the SOR, Applicant selected the option for a decision on the written record.[1] However, she later made statements that appear to be inconsistent with the option she selected. In her response to Department Counsel's File of Relevant Material (FORM), she made comments about "needing

[1] The other option was for a hearing within 150 miles of Applicant's home or workplace or by video teleconference.

an appearance before a judge" and "cannot make it stateside." Because approximately seven months passed between Applicant's response to the FORM and the Judge's assignment in this case, the Judge prudently reopened the record to give Applicant the opportunity to submit additional matters. In her subsequent submission, Applicant stated, "What all do you need from me since I am in Afghanistan and can not be present for whatever is needed." We note that Directive ¶ E3.1.4 states, "To be entitled to a hearing, the applicant must specifically request a hearing in his or her answer." While Applicant made ambiguous statements about her forum choice, she never specifically requested a hearing. Accordingly, the Judge did not err in deciding the case on the written record.

In her brief, Applicant noted that she was granted a security clearance that was scheduled to remain active until 2020. She also stated that the most recent review of her security clearance eligibility was instituted because her company wanted to upgrade the level of her clearance, and she apparently no longer needs that upgrade. To the extent that she is arguing that the most recent review of her security clearance should be disregarded, we do not find that argument persuasive. The reason why an an applicant may need a security clearance or the level of security clearance needed are not relevant considerations in a security clearance eligibility adjudication.[2] *See, e.g.*, ISCR Case No. 97-0016 at 4 (App. Bd. Dec. 31, 1997). Moreover, a prior decision to grant a security clearance to an applicant neither gives the applicant any vested right or entitlement in keeping a security clearance nor precludes the Federal Government from considering, at a future date, whether to continue that grant or to revoke it. *See, e.g.*, ISCR Case No. 99-0519 at 15 (App. Bd. Feb. 23, 2001).

The balance of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence. Her arguments, however, are not sufficient to show that the Judge weighed the evidence in a manner that is arbitrary, capricious, and contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. Applicant has failed to establish that the Judge committed any harmful error. 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."

[2] We note the current version of the adjudicative guidelines applies to any national security eligibility adjudication. Directive, Encl. 2, App. A ¶ 1(a) states: "The following National Security Adjudicative Guidelines ("guidelines") are established as the single common criteria for all U.S. Government civilian and military personnel, consultants, contractors, licensees, certificate holders or grantees and their employees, and other individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information (hereafter referred to as "national security eligibility"). These guidelines shall be used by all Executive Branch Agencies when rendering any final national security eligibility determination."

Order

The Decision 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