

KEYWORD: Guideline E; Guideline F

DIGEST: The Directive does not authorize a Judge to act as an investigator for either party.
Adverse decision affirmed.

CASENO: 16-03709.a1

DATE: 07/02/2018

DATE: July 2, 2018

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 16-03709
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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 January 19, 2017, 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 E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On March 27, 2018, after considering the record, Administrative Judge Braden M. Murphy denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The Judge found in favor of Applicant on the sole Guideline E allegation and against him on the five Guideline F allegations. Under Guideline F, the SOR alleged that Applicant had two delinquent student loans totaling about \$45,600, a judgment filed in 2014 for about \$670, and three other debts totaling about \$1,200. In his response to the SOR, Applicant admitted each debt and submitted no documents concerning the debts. Upon receipt of the case, the Judge reopened the record to provide Applicant the opportunity to submit documentation. In the decision, the Judge addressed the reopening of the record by stating:

In response to my order reopening the record, Applicant acknowledged that he had not provided documentation, and said he thought his creditors would send documents to the credit bureaus “to clear the debt from my name.” He indicated that he would contact the creditors for appropriate records. He also said he had recently been “laid off” from one of his company’s job sites, and transferred elsewhere. (AE A)¹

In his analysis, the Judge noted that Applicant failed to present documentation showing the satisfaction of specific debts and concluded that insufficient evidence was presented to conclude that his financial issues are unlikely to recur.²

In his Appeal Brief, Applicant challenges the Judge’s finding the he did not provide supporting documentation. He states that he “provided business names and account numbers in the initial package provided to me almost two years ago . . .” Appeal Brief at 1. We are unable to discern what “initial package” Applicant is referencing. To the extent that he may be arguing the Judge should have investigated the status of his alleged debts, we find no merit in the contention. The Directive does not authorize a Judge to act as an investigator for either party. *See, e.g.*, ISCR Case No. 11-06659 at 5 (App. Bd. Oct. 22, 2012). Applicant also provided documents in his Notice of Appeal and Appeal Brief that were not previously submitted to the Judge for consideration. Those documents constitute new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.29.

¹Decision at 3.

² In the analysis, the Judge notes that a government exhibit, a credit report post-dating the SOR, reflected that the student loans were consolidated, placed in a deferment status, and were not past due. Nevertheless, the Judge concluded that Applicant failed to take steps to resolve the student loans in a timely manner and did not set forth any plan to pay them.

Applicant has not identified any harmful error in the Judge’s decision. 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