

KEYWORD: Guideline F; Guideline G

DIGEST: The Board cannot consider new evidence on appeal. Applicant does not appeal the Judge unfavorable findings and conclusions under Guideline G. Adverse decision affirmed.

CASENO: 07-15663.a1

DATE: 11/25/2008

DATE: November 25, 2008

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 07-15663
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On April 9, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the

basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline G (Alcohol Consumption) of Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended (Directive). Applicant requested a hearing. On September 17, 2008, after the hearing, Administrative Judge David M. White denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s ultimate decision is arbitrary, capricious, or contrary to law.

The security concerns identified by the government in the SOR involve 15 debts under Guideline F, as well as intoxication and three alcohol-related arrests under Guideline G.¹ The Judge made formal findings against Applicant as to all of the allegations under Guideline G and as to 12 of the 15 debts under Guideline F. In his appeal, Applicant raises arguments only with regard to the Judge’s findings and conclusions under Guideline F. The appeal primarily consists of information not presented at the hearing—*i.e.*, new evidence. This evidence includes steps Applicant has taken since the hearing to resolve his financial situation, such as contacting creditors and making payments on the repayment plan initiated shortly before the hearing.² The Board cannot consider this information because the Directive does not allow the Board to consider new evidence. *See* Directive ¶ E3.1.29; and ISCR Case No. 06-22628 at 2 (App. Bd. Oct. 30, 2007).

Applicant presents no appeal to the Judge’s unfavorable findings and conclusions under Guideline G. The Board does not review a case *de novo*. *See, e.g.*, ISCR Case No. 06-18998 at 3 (App. Bd. Nov. 9, 2007). Applicant has not demonstrated that the Judge’s decision is arbitrary, capricious, or contrary to law. Given the record that was before him, the Judge’s ultimate unfavorable decision is sustainable.

Order

The Judge’s decision denying Applicant a security clearance is AFFIRMED.

Signed: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge

¹Applicant admitted all the SOR allegations except two of the debts.

²Applicant identifies as a factual error the Judge’s statement that Applicant had been steadily employed since February 2000. While there are imprecise references in the transcript to unemployment, Applicant’s detailed employment history in his appeal constitutes new evidence. However, even if the Judge’s statement about Applicant’s steady employment were considered to be in error, it would be harmless because correction of that statement would not likely change the Judge’s decision.

Member, Appeal Board

Signed; William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board