

KEYWORD: Guideline F

DIGEST: Applicant did not assert harmful error by the Judge. The Board cannot consider new evidence on appeal. Adverse decision affirmed.

CASE NO: 10-09072.a1

DATE: 12/08/2011

DATE: December 8, 2011

In Re:)	
)	
-----)	ISCR Case No. 10-09072
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD SUMMARY DISPOSITION

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 14, 2011, DOHA 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 that the case be decided on the written record. On September 23, 2011, after considering the record, Administrative Judge Henry Lazzaro denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant’s appeal brief contains no assertion of harmful error on the part of the Judge, based on the record that was before him. Rather, it contains a combination of record evidence and new

evidence, in the form of documents dated subsequent to the Judge's decision, showing Applicant's payment of specific debts. Applicant states that she prepared her reply in response to the Judge's adverse decision, and that the newly proffered documents demonstrate that the Judge erred in reaching his decision.

The Board cannot consider Applicant's new evidence on appeal. *See* Directive ¶ E3.1.29. The Appeal Board's authority to review a case is limited to cases in which the appealing party has alleged the Judge committed harmful error. Applicant has not made an allegation of harmful error on the part of the Judge.¹ Therefore, the decision of the Judge denying Applicant a security clearance is AFFIRMED.

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

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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

¹To the extent that Applicant's brief could be construed as arguing that the record evidence would support a favorable application of the mitigating conditions, such an argument is insufficient to demonstrate that the Judge erred. The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. *See, e.g.*, ISCR Case No. 09-07139 at 3 (App. Bd. Sep. 13, 2011).