

KEYWORD: Guideline E; Guideline F; Guideline J

DIGEST: Applicant has not challenged any of the Judge's findings of fact. He contends that he has taken the necessary steps over the last four to five years to mitigate the alleged security concerns. He argues these incidents occurred when he was younger and less mature. He notes that he had problems with his ex-wife; that he has received counseling; and that he has obtained full custody of his children. Applicant's arguments, in effect, advocate for an alternative weighing of the evidence. His disagreement with the Judge's weighing of the evidence or his ability to argue for a different interpretation of the evidence is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 17-01392.a1

DATE: 08/23/2019

DATE: August 23, 2019

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 August 22, 2018, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct), Guideline J (Criminal Conduct), and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On July 16, 2019, after the hearing, Administrative Judge Matthew E. Malone denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline E, the SOR alleged that Applicant was charged with criminal domestic violence on four occasions between 2012 and 2015; was charged with sexual contact with a minor in 2004; was involuntarily terminated from jobs in 2006, 2007, 2008, 2013, and 2015; submitted a false resume for employment in 2012; was evicted from at least three different residences, and made false statements in his 2015 security clearance application and during background interviews in 2016. The criminal domestic violence and sexual contact with a minor charges were cross-alleged under Guideline J. In responding to the SOR, Applicant admitted all of the SOR allegations with explanations. The Judge found against Applicant on the Guideline E and J allegations and in favor of him on the Guideline F allegations.

On appeal, Applicant has not challenged any of the Judge's findings of fact. He contends that he has taken the necessary steps over the last four to five years to mitigate the alleged security concerns. He argues these incidents occurred when he was younger and less mature. He notes that he had problems with his ex-wife; that he has received counseling; and that he has obtained full custody of his children. Applicant's arguments, in effect, advocate for an alternative weighing of the evidence. His disagreement with the Judge's weighing of the evidence or his ability to argue for a different interpretation of the evidence is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 15-00650 at 2 (App. Bd. Jun. 27, 2016). He also asserts that he needs his security clearance to care for his family and maintain his livelihood. The Directive, however, does not permit us to consider the impact of an unfavorable decision. *See, e.g.,* ISCR Case No. 14-02619 at 3 (App. Bd. Apr. 7, 2016).

Applicant's brief discusses Guideline K (Handling Protected Information). Guideline K is not at issue in this case.

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