

KEYWORD: Guideline F

DIGEST: Applicant argues that he was not provided due process because of the length of time it has taken to process his case. His argument fails to establish that he was denied any due process rights under the Directive. He was provided adequate notice of, and opportunity to respond to, the alleged security concerns. The Appeal Board has no authority to rule on delays in conducting security investigations or in processing cases. Applicant also argues the purported delays contributed to his decision to not seek legal representation in this case. This argument has no merit. The Judge properly advised Applicant of his rights to have a lawyer or personal representative assist him at the hearing, and Applicant acknowledged he understood those rights. He knowingly waived his right to legal representation. Adverse decision affirmed.

CASENO: 17-02208.a1

DATE: 02/15/2019

DATE: February 15, 2019

In Re:)
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-----) ISCR Case No. 17-02208
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Applicant for Security Clearance)
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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 June 30, 2017, 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 hearing. On October 31, 2018, after the hearing, Administrative Judge Roger C. Wesley denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant had two delinquent debts exceeding \$199,000, failed to file his 2013-2015 Federal income tax returns as required, and failed to pay his 2013-2014 Federal income taxes as required. The Judge found against Applicant on each SOR allegation, noting he provided no documentation that he filed the tax returns in question, paid the past-due taxes, or resolved a delinquent mortgage loan. The Judge noted Applicant's military career and his status as a graduate of a distinguished military academy.

In his appeal brief, Applicant argues that he was not provided due process because of the length of time it has taken to process his case. He notes his case has taken three and a half years to resolve. His argument fails to establish that he was denied any due process rights under the Directive. He was provided adequate notice of, and opportunity to respond to, the alleged security concerns. The Appeal Board has no authority to rule on delays in conducting security investigations or in processing cases. *See, e.g.*, ISCR Case No. 14-04186 at 3-4 (App. Bd. Oct. 28, 2015) and ISCR Case No. 11-12730 at 2 (App. Bd. Sep. 4, 2013). Applicant also argues the purported delays contributed to his decision to not seek legal representation in this case. This argument has no merit. The Judge properly advised Applicant of his rights to have a lawyer or personal representative assist him at the hearing, and Applicant acknowledged he understood those rights. Tr. at 7. He knowingly waived his right to legal representation.

Applicant's brief asserts that he has now filed his delinquent tax returns, has placed his primary residence for sale, and will use the proceeds of that sale to resolve his debts. These assertions constitute new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.29.

Applicant cites to a case of a public person that was in the news. The Board lacks jurisdiction to review the merits of a case committed to another Government body. *See, e.g.*, ISCR Case No. 15-04953 at 3-4 (App. Bd. May 4, 2017). Furthermore, each case must be adjudicated on its own merits. Directive, Encl. 2, App. A ¶ 2(b).

Applicant also asserts that the Judge erred in his mitigation analysis and whole-person assessment. He emphasizes, for example, his service in the military and as a defense contractor, his lack of security violations, and the impact of the Great Recession on his financial situation. He argues that he is not a threat to national security. His arguments, however, are neither enough to rebut the presumption that the Judge considered all of the evidence in the record nor sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-02488 at 3 (App. Bd. Aug. 30, 2018). Additionally, Applicant highlights the impact that the denial of his security clearance has had on him. The Directive does

not permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 14-04202 at 4 (App. Bd. Dec. 24, 2015).

Applicant has failed to establish that the Judge committed any harmful error. 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