

KEYWORD: Guideline F

DIGEST: Applicant's current appeal brief raises no allegation of harmful error on the part of the Judge. Rather, it indicates he remains unemployed and will have difficulty finding employment without a security clearance. The Directive, however, does not permit us to consider the impact of an unfavorable decision. Adverse decision is affirmed.

CASE NO: 19-01011.a2

DATE: 07/01/2020

DATE: July 1, 2020

In Re:)
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 -----) ISCR Case No. 19-01011
)
)
 Applicant for Security Clearance)
)
)

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 April 15, 2019, 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 initially requested a decision on the written record but later requested a hearing. On November 26, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

On January 30, 2020, we remanded the case to the Judge on a due process issue. In his first appeal, Applicant claimed he sent an email to Judge on October 18, 2019, never received a response to his email, and assumed that the record would remain open while he was unemployed. Applicant’s email of October 18, 2019, was not in the record. In our Remand, the Judge was asked to determine what occurred on October 18th and to take appropriate action in accordance with the Directive. In the Remand Decision of March 3, 2020, the Judge added Applicant’s email of October 18, 2019 to the record. This email merely updated the Judge on Applicant’s unemployment status. It neither requested the record remain open nor contained any proffer of additional evidence. On February 6, 2020, the Judge reopened the record to allow the parties to submit documents and arguments on the issue of whether Applicant’s assumption the record would remain open was unfounded or unreasonable. Both parties submitted responses. The Judge concluded that “[t]here were no discussions with Applicant during the hearing or after the hearing that could have led him to reasonably believe that the record would remain open beyond October 18, 2019” and noted he adhered to his previous decision. Decision at 4. Applicant appealed the Judge’s Remand Decision.

Applicant’s current appeal brief raises no allegation of harmful error on the part of the Judge. Rather, it indicates he remains unemployed and will have difficulty finding employment without a security clearance. The Directive, however, does not permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 11-13180 at 3 (App. Bd. Aug. 21, 2013).

The Board does not review cases *de novo*. 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. Because Applicant has not made such an allegation of error, the decision of the Judge denying Applicant a security clearance is affirmed.

Order

The case is **AFFIRMED**.

Signed: Michael Y. Ra'anan
Michael Y. 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