

KEYWORD: Guideline E

DIGEST: Applicant contends the SOR was misdated and that the Judge applied the wrong Guidelines as a result. Given the disparity in the date of the SOR and the answer, Applicant's contentions may have merit. Adverse decision remanded.

CASENO: 06-22273.a1

DATE: 11/28/2007

DATE: November 28, 2007

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 06-22273
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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. DOHA issued a statement of reasons (SOR), dated January 27, 2006, advising Applicant

of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested the case be decided on the written record. On August 31, 2007, after considering the record, Administrative Judge Christopher Graham denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

On appeal Applicant contends that the SOR in this case was misdated as January 27, 2006, when in fact it was issued in January 2007 and received by him in February 2007. Because of this possible misdating error, Applicant contends that the Judge applied the wrong Guidelines in his case—that is, the old Guidelines for SORs issued prior to September 1, 2006, rather than the new Guidelines for SORs issued after that date.

Normally, an applicant must submit his answer “. . . within 20 days from receipt of the SOR.” Directive at ¶ E3.1.4. If an applicant does not file a timely answer, DOHA may discontinue processing his case and deny him a clearance. Directive at ¶ E3.1.5. A review of the record indicates that Applicant’s answer to the SOR was dated February 9, 2007 and was stamped as received by DOHA on February 20, 2007. That means his answer would have been received more than a year after the date of the SOR. Although the letter transmitting the SOR to Applicant was similarly dated January 27, 2006, Applicant’s acknowledgment of receipt on that letter was dated February 1, 2007, and DOHA stamped this letter and acknowledgment as being received by DOHA on February 5, 2007. Department Counsel did not file a reply to Applicant’s appeal and there is no explanation as to why it would have taken over a year for Applicant to receive the SOR.

Given the disparity in the dates between the SOR and the answer, and the fact that the SOR was issued close to the beginning of the year, Applicant’s assertions may have merit. However, because of the present state of the record, the Board is not in a position to resolve the issue. Accordingly, the case is remanded to the Judge. On remand, the Judge is permitted to reopen the record as appropriate to resolve any outstanding issues relating to the issuance of the SOR and the application of the appropriate Guidelines.

Order

The determination of the Judge denying Applicant a security clearance is REMANDED.

Signed: Michael Y. Ra’anan

Michael Y. Ra’anan
Administrative Judge
Chairman, 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