

KEYWORD: Guideline E

DIGEST: The Judge's decision states that Applicant's response to the SOR contain admissions but no explanations. The presumption that the Judge considered all the evidence is rebutted with regard to Applicant's explanations included in the SOR response. Adverse decision remanded.

CASENO: 11-05217.a1

DATE: 05/04/2012

DATE: May 4, 2012

In Re:)
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 -----) ISCR Case No. 11-05217
)
)
 Applicant for Security Clearance)
)
)

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. On July 28, 2011, DOHA issued a statement of reasons (SOR) 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 a hearing. On February 22, 2012, 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.

As a threshold issue, we note Applicant’s contention in his appeal brief that the Judge did not consider all of the record evidence. Applicant included a copy of his response to the SOR, in which he admitted the allegations and provided detailed explanations for his conduct. However, in his Summary of Pleadings, the Judge stated the following: “In his response to the SOR, Applicant admitted each of the allegations. He provided no explanations.” Decision at 2. A Judge is presumed to have considered all of the record evidence. *See, e.g.*, ISCR Case No. 11-03025 at 3 (App. Bd. Jan. 6, 2012). However, in this case, the Judge’s comment raises in a reasonable mind the belief that the Judge did not consider Applicant’s explanations included in the SOR response. Accordingly, Applicant has rebutted the presumption that the Judge considered all of the record evidence. We remand the case to the Judge for a new decision, after which the case will be processed in accordance with the Directive.

Order

The Judge’s adverse security clearance decision is REMANDED.

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

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

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board