

KEYWORD: Guideline F

DIGEST: 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. Such an error has not been alleged in this case. Adverse decision affirmed.

CASE NO: 15-00186.a1

DATE: 07/19/2016

DATE: July 19, 2016

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-00186
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APPEAL BOARD SUMMARY DISPOSITION

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 July 11, 2015, 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 decision on the written record. On May 9, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert J. Tuiider denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant’s appeal brief contains no assertion of error on the part of the Judge. In the

decision, the Judge noted he sent Applicant an email (copying Department Counsel) that provided him the opportunity to submit additional information on specific debts. The Judge received no response. Decision at 2. Applicant claims the Judge's email went into his spam folder, and he did not see the email before receipt of the decision. He is now requesting an opportunity to provide the information the Judge requested. A review of the record reflects Applicant was provided with the procedural rights set forth in the Directive, including an opportunity to respond to Department Counsel's File of Relevant Material.

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. Such an error has not been alleged in this case. The Board does not review cases *de novo*. The decision of the Judge denying Applicant a security clearance is AFFIRMED.

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

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board

Dissenting Opinion of Administrative Judge James E. Moody

The Judge cited Applicant's failure to respond to his request for additional information as one of the explicit reasons that he denied Applicant a clearance. "Despite having been provided with an opportunity to do so, Applicant did not provide documentation that his remaining six debts were being resolved or were under control." Decision at 6. However, Applicant never saw the request. The Judge sent the request for information to Applicant's personal email account, where it was routed to the spam folder. Applicant states that his previous communications from DOHA had been through the postal service or his official email account. It isn't surprising to me, therefore, that he did not see the Judge's message. Under the facts of this case, I would remand the file to the Judge to provide Applicant with an opportunity to respond to his request for information.

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

