

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant’s response to the File of Relevant material references an attachment which is not in the file. Department Counsel noted to the Judge that he did not see any “new documents” accompanying the response. It is unclear from the record what, if any, efforts were made by Department Counsel or the Judge to ascertain whether the referenced documentation had become separated from the letter or otherwise resolve the issue. Adverse decision remanded.

CASENO: 06-25543.a1

DATE: 12/27/2007

DATE: December 27, 2007

In Re: ----- Applicant for Trustworthiness Determination)))))))	ADP Case No. 06-25543
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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) proposed to deny or revoke access to automated information systems in ADP-I/II/III sensitivity positions for Applicant. On February 10, 2007, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under Guideline F (Financial Considerations) and 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 29, 2007, after considering the record, Administrative Judge Arthur E. Marshall, Jr. denied Applicant's request for a trustworthiness designation. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

A review of the record indicates that Applicant received the Government's File of Relevant Material (FORM) on June 29, 2007. She filed a timely response to the FORM, dated July 24, 2007. Applicant's response was a hand-written letter which described her efforts to work with her creditors, and stated: "I have proof for SOR #1a. Here is a copy of the letter I received stating that my IRS account is paid in full and there is nothing else owing." The referenced attachment, however, does not appear in the file.

By memorandum dated July 31, 2007, Department Counsel transmitted Applicant's response to the Administrative Judge stating that he had no objection to its admission into the record. In that memorandum he also stated: "I do not see any new documents accompanying [Applicant's] letter of 7/24/07." It is unclear from the record what, if any, efforts were made by Department Counsel or the Administrative Judge to ascertain whether the referenced documentation had been mistakenly separated from Applicant's letter after its arrival at DOHA, or if any efforts were made to contact the Applicant and otherwise resolve the issue. In her appeal brief, Applicant states: ". . . I have previously supplied the documentation required to resolve all issues to the government's satisfaction. I am enclosing copies of that same documentation for your reconsideration."

The Board cannot consider the new evidence submitted by Applicant on appeal. Directive ¶ E3.1.29. However, given the language in Applicant's response to the FORM and Department Counsel's transmittal memorandum to the Administrative Judge, the Board cannot determine whether Applicant submitted the attachment or not. In this regard, the Board notes that Applicant's appeal brief states: "Enclosed is a letter from the Internal Revenue Service describing my account as being 'paid in full' with a zero balance. Additionally, I'm enclosing a letter from the unemployment agency confirming that I was receiving unemployment benefits during the period February 2002 through September 2002." However, only two pages from a state employment and training agency are attached.

Accordingly, the case is remanded to the Administrative Judge. On remand, the Administrative Judge is permitted to reopen the record as appropriate, to resolve any outstanding issues.

Order

The determination of the Judge denying Applicant access to automated information systems in ADP I/II/II sensitivity positions is REMANDED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

Signed: Michael D. Hipple

Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board