

KEYWORD: Guideline f

DIGEST: Applicant was twice advised of his right to submit additional evidence in response to the FORM. An applicant is expected to take reasonable steps to protect his or her interests inDOHA proceedings. Adverse decision affirmed.

CASENO: 09-04090.a1

DATE: 11/12/2010

DATE: November 12, 2010

In Re:)
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)
 -----) ISCR Case No. 09-04090
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)
 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 21, 2009, DOHA 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 the case be decided on the written record. On August 10, 2010, after considering the written record, Administrative Judge Thomas M. Crean denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether Applicant should be afforded the opportunity to submit evidence in response to the SOR allegations as a result of his misunderstanding regarding his right to submit materials in response to the government’s File of Relevant Material (FORM). For the following reasons, the Board affirms the Judge’s unfavorable decision.

The Judge found that the total delinquent debt listed on Applicant’s credit reports was over \$58,000. The Judge also found that while Applicant only admitted to 3 of the 14 debts alleged in the SOR, Applicant provided no information or details to explain his financial circumstances or how he accumulated debt. The Judge also found that Applicant provided no information to dispute the legitimacy of the debts, to indicate that he has received financial counseling, or to show that he has taken or intends to take any action to resolve or pay his delinquent debts. The Judge concluded that, although he considered the potentially applicable mitigating conditions, he could not apply them to Applicant’s benefit in that Applicant had not provided any information about his finances that would allow him to do so. The Judge concluded that Applicant failed to establish that the reasons for his debts were beyond his control and that he took reasonable and responsible efforts to manage his finances.

The case file reflects the fact that Applicant returned the receipt accompanying the FORM without signing it and without indicating the date on which it was received. Applicant acknowledges his receipt of the FORM and states that he reviewed “the documents and the instructions,” but it was his understanding that I was only allowed to respond “I deny” or “I admit” to the SOR enclosed with the FORM. Applicant asserts that, in reviewing the instructions, it was not apparent to him that he could provide additional information and/or evidence to explain the financial concerns in the SOR. Applicant states that had that been his understanding, he would have provided the relevant supporting documentation along with his SOR responses. Applicant included four attachments with his brief that he now wishes to have considered.

A review of the administrative file reveals that Applicant was sent a cover letter along with the government’s FORM. The letter was dated June 7, 2010. That letter states, in pertinent part, that Applicant had the opportunity to review the attached FORM and to submit any material he wished a Judge to consider, or to make any objections he might have as to the information in the FORM. The letter also informed Applicant that if he did not file objections to the FORM or submit any additional information within 30 days of the receipt of the letter, his case would be assigned to a Judge for a determination based solely on the FORM. The FORM itself has a section entitled “VII. Notice of Applicant’s Right to Respond.” Section VII contains the same information as the June 7, 2010 cover letter.

After a review of the June 7, 2010 letter, the Board concludes that the plain language of the letter and Section VII of the FORM put Applicant on reasonable notice of his right to submit evidence for the Judge's consideration independent of his answers to the SOR. It is important to note that Applicant had already provided his answers to the SOR allegations on August 19, 2009. The Board also notes that although a considerable length of time passed between Applicant's answers to the SOR and the receipt of the FORM and cover letter, Applicant does not state that he forgot that he had answered the SOR previously. Even without the assistance of a lawyer, an applicant is required to take reasonable steps to protect his or her interests in DOHA proceedings. A review of the entire record discloses no basis to conclude that Applicant was denied the rights due him under the Directive or that he had not been adequately advised of those rights. *See* ISCR Case No. 08-03110 at 2 (App. Bd. Jan. 27, 2009).

Inasmuch as the Board concludes that there is no basis to reopen the record, the Board cannot consider the materials submitted by Applicant as they constitute new evidence, Directive ¶ E3.1.29. Therefore, the Judge's adverse security clearance decision is sustainable.

Order

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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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