

KEYWORD: Guideline F

DIGEST: Applicant fails to explain why he submit documentation he now references when given an opportunity to do so. Adverse decision affirmed.

CASENO: 09-07091.a1

DATE: 08/11/2010

DATE: August 11, 2010

In Re:)
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)
 -----) ISCR Case No. 09-07091
)
)
 Applicant for Security Clearance)
)
)

APPEAL BOARD SUMMARY DISPOSITION

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 October 28, 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 that the case be decided on the written record. On May 17, 2010, after considering the record, Administrative Judge Shari Dam denied Applicant's request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant's appeal brief contains no assertion of harmful error on the part of the Judge. Rather, Applicant asks the Board to reverse the Judge's decision and give him an opportunity to send in additional evidence including leave and earnings statements, pay stubs, evidence of debt payment, and character reference letters, which he believes would be sufficient to change the outcome of the case.

In this case, Applicant elected to have a decision based upon the written record, and then responded to the government's file of relevant material (FORM) with two items of documentary evidence. The Judge based her decision, in part, on the fact that: "[Applicant] did not provide evidence that he paid, attempted to pay, or establish a repayment plan for any debt . . ." Decision at 5. The Board has previously noted that it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts. *See* ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006). A review of the record indicates Applicant was provided with the procedural rights set forth in Executive Order 10865 and the Directive, including an opportunity to respond to the government's file of relevant material. Applicant's brief contains no explanation as to why he did not submit the documentation which he now references when given an opportunity to do so. Although *pro se* applicants cannot be expected to act like lawyers, they are expected to take timely, reasonable steps to protect their rights under the Directive. *See, e.g.*, ISCR Case No. 00-0593 at 4 (App. Bd. May 14, 2001). If they fail to take timely, reasonable steps to protect their rights, that failure to act does not constitute a denial of their rights. *See, e.g.*, ISCR Case No. 02-19896 at 6 (App. Bd. Dec. 29, 2003).

The Board cannot consider new evidence on appeal. *See* Directive ¶ E3.1.29. Nor does it review cases *de novo*. 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. Applicant has not made an allegation of harmful error. Therefore, the decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, 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