

KEYWORD: Guideline E

DIGEST: Applicant's intermittent suggestions at the hearing that he could pass a polygraph did not obligate the Judge to act nor is the Judge inaction indicative of error. Adverse decision affirmed.

CASENO: 12-02407.a1

DATE: 08/15/2013

DATE: August 15, 2013

In Re:)
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)
 -----) ISCR Case No. 12-02407
)
)
 Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

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 October 12, 2012, DoD 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). Department Counsel requested a hearing. On June 11, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran 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 makes no assertion of harmful error on the part of the Judge. He states the following: “. . . when I had a hearing with Judge Edward W. Loughran, I offered to take a polygraph to proof my innocent [sic], but I did not have that chance. That polygraph could make the different [sic] on my outcome of my judgment.” The record indicates that Applicant mentioned his willingness to submit to a polygraph on three occasions during the hearing.¹ At no time, however, did he make a specific request of the Judge for an opportunity to take a polygraph. To the extent Applicant’s brief can be construed as an assertion that the Judge should have afforded Applicant access to a polygraph, or given him the opportunity to proffer polygraph evidence, he has failed to demonstrate error.

Applicant did not make any request of the Judge regarding a polygraph, nor did he ask the Judge to rule or otherwise comment upon his stated willingness to submit to a polygraph. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. *See* Directive ¶ E3.1.15. Accordingly, it was incumbent on Applicant to obtain and present evidence he believed would aid his cause. To the extent Applicant believed that a polygraph examination would assist his case, it was his responsibility to obtain one. Applicant’s intermittent suggestions at the hearing that he could pass a polygraph did not obligate the Judge to act, nor is the Judge’s inaction indicative of error. Although *pro se* applicants cannot be expected to act like lawyers, they are expected to take timely, reasonable steps to protect their rights. *See, e.g.*, ISCR Case No. 08-12061 at 2 (App. Bd. Dec. 15, 2009). Had he desired an opportunity to submit polygraph evidence, it was incumbent upon Applicant to so state clearly and unambiguously.

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. *See* Directive ¶ E3.1.32. The Board does not review cases *de novo*.

¹Tr. at 20, 31-32, and 62.

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