

KEYWORD: Guideline F

DIGEST: Applicant was erroneously informed that he had a favorable adjudication prior to the hearing. Adverse decision remanded..

CASENO: 14-03771.a1

DATE: 09/02/2015

DATE: September 2, 2015

In Re:	)	
	)	
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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 Department of Defense (DoD) declined to grant Applicant a security clearance. On August 15, 2014, 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 hearing. On June 25, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr., denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether he was denied due process. Consistent with the following, we remand the case for a new hearing.

Applicant contends that his preparation for the hearing had been impaired by an error of the Consolidated Adjudications Facility (CAF). The record shows that, after he had completed his security clearance application (SCA) in 2013, and after he had received the SOR, he was notified by the CAF that he had been approved for a clearance. This notification was erroneous, insofar as it was based upon on a previous investigation that had been completed in 2003. However, Applicant concluded that he had been awarded a clearance despite his receipt of the SOR and believed that his request for a hearing had been overtaken by events.

At the hearing, Applicant stated the following:

I was under the impression that because . . . I was adjudicated and awarded a clearance earlier, or late last year, that this hearing would no longer be necessary, so I lack the evidence necessary to [resolve some of the allegations]. Tr. at 19.

Applicant submitted copies of the emails that he had sent to DOHA personnel requesting clarification of his situation, which the Judge appended to the record as hearing exhibits. One of them states in part:

My clearance application was adjudicated and I was awarded a SECRET clearance on 7 Nov 14. This predates my initial notification from [Department Counsel] on 2 Dec 14 of this hearing. For this reason, it is my opinion that a hearing is no longer necessary and would like to be removed from the docket and not waste the court’s time. Please advise. Hearing Exhibit III.

The record contains no replies to these emails. Department Counsel acknowledged that she had not replied. “I was trying to discern an answer from the DoD CAF and did not get back to Applicant with an answer. I should have responded to him[.]” Tr. at 35. The Judge found that Applicant had received adequate notice of the hearing, along with copies of the evidence that the Government intended to present. However, he acknowledged that the erroneous notification had likely caused Applicant confusion. Therefore, he gave Applicant two weeks after the close of the hearing to submit the documentary evidence that he otherwise would have produced during his case-in-chief.

Despite the Judge's efforts to cure the error at issue here, we conclude that the notification of a favorable adjudication may have led Applicant reasonably to believe that his request for a substantive hearing had been overtaken by events and that he would not need to present evidence in order to close out his case. Under the circumstances, we conclude that the best resolution is to remand the case for another hearing. Any other remaining issues are not ripe for our consideration.

**Order**

The case is **REMANDED**.

Signed: Michael Ra'anan  
Michael Ra'anan  
Administrative Judge  
Chairperson, 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