

KEYWORD: Guideline F

DIGEST: Although, as the Judge found, one of Applicant’s credit reports describes this debt as a credit card, the SOR erroneously stated that it arose from a mortgage agreement. Adverse decision remanded.

CASENO: 14-05302.a1

DATE: 09/29/2017

DATE: September 29, 2017

In Re:)	
)	
-----)	ISCR Case No. 14-05302
)	
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 March 23, 2015, 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 decision on the written record. On June 21, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether Applicant was placed on reasonable

notice of the security concern in his case and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we remand the case to the Judge.

The Judge's Findings of Fact and Analysis

There were two allegations in the SOR. The Judge resolved one of them, a mortgage account, in Applicant's favor. She resolved the other, a credit card debt of a little over \$10,300, against him. The Judge stated that Applicant did not demonstrate that he had resolved this debt, having claimed without corroboration that it was connected in some way with the mortgage. She concluded that Applicant did not show responsible action in regard to the credit card account, nor did he present evidence of a good-faith effort to pay it. The Judge noted that the SOR described this account as a mortgage, although Applicant's credit report shows that it is a credit card.¹

Discussion

Applicant's Appeal Brief includes new evidence, which we cannot consider. Directive ¶ E3.1.29. However, we will consider Applicant's new evidence to the extent that it bears upon the due process issue that he has raised. *See, e.g.*, ISCR Case No.16-01129 at 2 (App. Bd. Aug 7, 2017). Applicant notes that the SOR misidentified the credit card debt as a mortgage account. He argues that he assumed that, for accounting purposes, the creditor had split this account into two, and he responded to the SOR and to the File of Relevant Material (FORM) on the belief that the only concern in his case arose from the mortgage.

We find this argument persuasive. Although, as the Judge found, one of Applicant's credit reports describes this debt as a credit card, the SOR erroneously stated that it arose from a mortgage agreement.² Under the facts of this case, we conclude that Applicant reasonably, though erroneously, believed that he needed to address only his mortgage account and need not provide evidence about other debts. Accordingly, the best resolution of this case is to remand it to the Judge to give Applicant an opportunity to address the credit card debt, after which she will issue a new Decision in accordance with the Directive. Other issues raised in this appeal are not ripe for consideration.

1

The SOR reads, in pertinent part, as follows: 1a.: "You are indebted to [Bank] for mortgage [account number] that has been charged off in the approximate amount of \$71,218.00. As of the date of this Statement of Reasons, approximately \$33,218.00 was delinquent and unpaid."

1b. "You are indebted to [Bank] for mortgage [account number] that has been charged off in the approximate amount of \$10,340.00. As of the date of this Statement of Reasons, it remains unpaid." As noted above, this account is actually for a credit card, owed to the same bank.

2

In addition, on the first page of the FORM, Department Counsel provided an incorrect account number for the credit card debt, one that actually applied to an account that was not alleged in the SOR. She supplied a correct number on the second page of the FORM.

Order

The Decision is **REMANDED**.

Signed: Michael Ra'anan

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board