

KEYWORD: Guideline F

DIGEST: Applicant has not made a claim of factual or legal error with sufficient specificity to permit review on appeal. Applicant's *pro se* status does not relieve him of the obligation to raise specific claims of error. Even though a *pro se* applicant's brief cannot be expected to meet the standards expected of a lawyer's brief, he or she must set forth specific claims of error. Adverse decision affirmed.

CASENO: 17-03372.a1

DATE: 10/19/2018

DATE: October 19, 2018

In Re:))	
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))	ISCR Case No. 17-03372
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 13, 2017, 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 July 27, 2018, after considering the record, Administrative Judge Paul J. Mason 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 the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact and Analysis

The SOR alleged that Applicant had six delinquent debts totaling about \$39,000. They became delinquent between 2012 and 2014. He admitted the two largest debts that were the result of a failed business venture. In his background interview, he indicated that he did not intend to do anything regarding one of those debts because it was charged off. In early 2018, however, his debt repair firm advised that the creditor agreed to settle the account for 12 monthly payments. No settlement letter was submitted, but he provided confirmation of making one monthly payment. He did not intend to address the other admitted business debt because it was charged off and no longer was listed on his credit report.

Applicant denied the remaining alleged debts for various reasons. He claimed \$2,000 in fraudulent charges were made on one credit card account and the creditor told him it would pay the charges. In 2015, a collection agency filed a legal action against him for the balance, but that action was later dismissed. He claimed his credit repair firm would have the account removed from his credit report. In early 2018, the credit repair firm indicated the creditor accepted a settlement check of about \$1,500, but no documentation of payment was provided. He claimed another debt resulted from a stolen credit card; however, the record contains letters from a collection agency describing Applicant’s settlement agreement and resolution of the debt. He claimed that a judgment against him was in the name of his former business, but provided no proof it has been removed from his credit report. He claimed his was disputing a bank debt but provided no supporting documentation.

The Judge noted that Applicant had over \$500,000 in assets. In his analysis, the Judge stated, “The primary reason that Applicant’s security clearance application cannot be granted at this time is based on the contradictory positions he has taken about the delinquent debts during the security clearance process.” Decision at 7. The Judge also concluded that “Applicant’s documented evidence of full satisfaction of only one of six SOR accounts and uncorroborated claims of paying on the other accounts, is insufficient to overcome the ongoing security concerns engendered by the financial considerations guideline.” Decision at 7-8.

Discussion

Applicant's appeal basically consists of one sentence, *i.e.*, "Specific Claims of factual error: Incorrect information was used for the judge's determination." Appeal Brief at 1. In making that claim, Applicant also references documents attached to his brief. Some of those documents are not in the record and post-date the Judge's decision. The Appeal Board cannot consider new evidence on appeal. Directive ¶ E3.1.29. Applicant's brief fails to identify any specific error and also fails to explain how the attached documents that are in the record relate to his claim of error.

As the Appeal Board has previously stated:

There is no presumption of error below, and the appealing party has the burden of raising and demonstrating factual or legal error by the Administrative Judge. *See, e.g.*, ISCR Case No. 00-00339 (March 22, 2001) at p. 3. Furthermore, the appealing party must set forth its claims of error with specificity. *See, e.g.*, ISCR Case No. 99-0519 (February 23, 2001) at p. 9. The requirement that the appealing party raise issues with specificity serves some important purposes. First, the appealing party must provide specificity in its claims of error so that the nonappealing party can have a reasonable opportunity to respond to those claims of error, and the Board can discern what the appealing party is claiming to be factual or legal error by the Judge. *See, e.g.*, ISCR Case No. 99-0295 (October 20, 2000) at pp. 3-4. Second, the Board does not review cases *de novo*. Rather, the Board is limited to reviewing a Judge's decision under the terms of the Directive, Additional Procedural Guidance, Item E3.1.32. ("The Appeal Board shall address the material issues *raised by the parties* to determine whether harmful error occurred.")(italics added) *See also* ISCR Case No. 99-0519 (February 23, 2001) at p. 9. If an appealing party fails to make any specific claim of factual or legal error, the Board cannot assume the role of surrogate advocate and search the record below and the Judge's decision to ferret out possible error. Third, the Board cannot engage in reasoned decision-making when carrying out its appellate responsibilities unless the appealing party provides some specificity to its claims of factual or legal error. The Board cannot be expected to guess what an appealing party believes is factual or legal error by the Judge. Fourth, unless the appealing party raises claims of error with some specificity, the Board could waste its time (and prejudice the nonappealing party) by addressing matters that the appealing party may not believe involve error by the Judge.¹

In this case, Applicant has not made a claim of factual or legal error with sufficient specificity to permit review on appeal. Applicant's *pro se* status does not relieve him of the obligation to raise specific claims of error. Even though a *pro se* applicant's brief cannot be expected to meet the standards expected of a lawyer's brief, he or she must set forth specific claims of error. *See, e.g.*, ISCR Case No. 00-0050 at 3. Here, Applicant has failed to allege adequately that the Judge committed an error in his decision.

¹ ISCR Case No. 00-0050 at 2-3 (App. Bd. Jul. 23, 2001).

Order

The Decision is **AFFIRMED**.

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