

KEYWORD: Guideline M; Guideline E

DIGEST: The Board cannot consider new evidence on appeal. Adverse decision affirmed.

CASENO: 06-03606.a1

DATE: 05/23/2007

DATE: May 23, 2007

In Re: ----- SSN: ----- Applicant for Security Clearance)))))))	ISCR Case No. 06-03606
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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 July 18, 2006, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline M (Misuse of Information Technology Systems) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested the case be decided upon the written record. On November 27, 2006, after considering the record, Administrative Judge Shari Dam denied Applicant’s request for a security clearance. Applicant appealed the Judge’s

unfavorable clearance decision.

Applicant's appeal brief contains no assertion of harmful error on the part of the Judge.¹ Rather, it contains new evidence, in the form of a statement from the Applicant clarifying his answer to paragraph 1.d of the SOR. Applicant also describes his ongoing efforts to improve his behavior and work performance, and to obtain mental and behavioral counseling from a credentialed professional.

The Board cannot consider Applicant's new evidence on appeal. *See* Directive ¶ E3.1.29. 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. It does not review cases *de novo*. 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

¹Applicant asserts the Judge erred in the synopsis when she stated Applicant had improperly used a government computer to access pornographic and foreign web sites, when in fact Applicant had improperly used a company computer to access those sites. The Board has previously noted that absent unusual circumstances, a flaw or failing in the synopsis of a Judge's decision is not likely to be harmful error. *See, e.g.*, ISCR Case No. 02-06338 at 3 (App. Bd. Sept. 7, 2004). In this case, the SOR alleged Applicant had improperly used a company computer to access pornographic and foreign web sites. Applicant had admitted to the allegations, and the Judge made sustainable findings in that regard in text of her decision. Accordingly, the error noted by Applicant is harmless.