KEYWORD: Guideline F

DIGEST: Applicant's appeal has failed to identify any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. Adverse decision affirmed.

CASE NO: 12-10810.a1

DATE: 07/12/2016

DATE: July 12, 2016

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 July 2, 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 April 27, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Martin H. Mogul 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact and Analysis

Applicant is a 50-year-old employee of a defense contractor. He is married and has three adult children. He served in the U.S. military from 1987 to 2008.

The SOR alleged a dismissed bankruptcy in 2010 and overdue debts totaling approximately $550,000. The Judge found in favor of Applicant on the bankruptcy allegation and three of the alleged debts, including a mortgage deficiency of about $528,000. He found against Applicant on the six remaining debts. Regarding those six debts, the Judge noted Applicant presented no evidence to show that, since the SOR was issued, he contacted any of the creditors, made any payment plans, or resolved or reduced any of those overdue debts. The Judge concluded none of the mitigating conditions applied to those six debts.

Discussion

In the appeal brief, Applicant states that he did not receive Items 4 and 5 that were referenced in the decision. Items 4 and 5 were credit reports attached to Department Counsel's File of Relevant Material (FORM). We note that it is common practice for Department Counsel to identify documents attached to a FORM as "Items." Likewise, Judges in their decisions often refer to those attachments as "Items." In this case, however, Department Counsel in the narrative portion of the FORM did not refer to the attached documents as "Items," but instead referred to them as "Evidence."[1] On the other hand, the Judge in his decision referred to those attachments as "Items." This difference in terminology for identifying the FORM attachments may have confused Applicant, and he may not have been aware of what the Judge was referring to when he used the term "Items."

Even if Applicant did not receive Items 4 and 5, we find no harmful error. On September 15, 2015, a copy of the FORM was mailed to Applicant. He received it on September 29, 2015. He was informed that the FORM contained relevant information that will be submitted to an administrative judge to make a determination in his case. He was given 30 days from receipt of the FORM to review the file, submit any objections, and provide additional information that he wished to be considered. He submitted a response to the FORM on October 21, 2015. In that response, he did not indicate any of the documents listed in the FORM were missing. His response included a copy of the narrative portion of the FORM, which included a list of the attached documents.[2] If he did not receive documents attached to the FORM, he was provided an opportunity to request those documents and correct that error. By failing to take such action, he cannot now complain that he was harmed. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. *See, e.g.*, ISCR Case No.

[1] In the record, the documents attached to the FORM were stamped as "Item # " and appropriately numbered.

[2] In his response to the FORM, Applicant did not submit the documents that were attached to the FORM.

12-02371 at 3 (App. Bd. Jun. 30, 2014). Applicant has not established that he was denied his rights under the Directive.

In his response to the FORM, Applicant referred to a credit report dated October 21, 2015, to support his claims about various debts. In his appeal brief, he noted that he mistakenly did not attach that credit report to his response to the FORM. His failure to submit that credit report does not constitute harmful error by the Judge and warrants no relief on appeal. *See*, Directive ¶ E3.1.32. In his appeal brief, he provided a new credit report in support of his claims. This credit report constitutes new evidence that the Board can neither receive nor consider. *See Id.* ¶ E3.1.29.

Applicant's appeal has failed to identify any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the record. "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

Order

The case is **AFFIRMED**.

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 F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board