

**KEYWORD:** Guideline F; Guideline E

DIGEST: Applicant did not respond to the government's file of relevant material. A party cannot reasonably expect a judge's decision to be based on evidence which was not before the Judge. Adverse decision affirmed.

CASENO: 08-06802.a1

DATE: 08/05/2009

DATE: August 5, 2009

## **APPEAL BOARD DECISION**

## 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 September 4, 2008, DOHA issued a statement of reasons advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended (Directive). Applicant requested a decision on the written record. On May 29, 2009, after reviewing the record, Administrative Judge Mary E. Henry denied Applicant's request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's decision is arbitrary, capricious, or contrary to law.

In his appeal brief, Applicant contends that the evidence relied on by the Judge was not current. Applicant sought to acquire new evidence for purpose of the appeal. The Board is unable to consider information that was not part of the record, because the Board cannot consider new evidence on appeal. *See* Directive ¶ E3.1.29.

The Judge's decision was based entirely on the government's File of Relevant Material (FORM) including Applicant's response to the SOR. In February 2009, Applicant received a copy of the FORM and had the opportunity to submit materials to further refute, extenuate, or mitigate the information in the FORM. At that time, Applicant could have submitted any materials he thought were more current than the evidence in the FORM when he received it. Applicant did not respond to the FORM. Applicant has not demonstrated error on this issue.

As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party cannot reasonably expect a Judge's decision to be based on evidence which was not before the Judge. The Judge's decision is sustainable.

## **Order**

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan  
Michael Y. Ra'anan  
Administrative Judge  
Member, Appeal Board

Signed: Michael D. Hipple  
Michael D. Hipple  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board