

KEYWORD: Guideline E; Guideline G; Guideline H; Guideline I

DIGEST: Applicant has made a prima facie showing that exhibits may be missing from the record. We conclude the best resolution of this appeal is to remand the case to the Judge to determine whether documents are missing from the record. If the Judge concludes that documents are missing, she should collect them, consider them, and issue a new decision consistent with Directive ¶ E3.1.35. If the Judge determines that no documents are missing, she should issue a new decision in which she reports the basis for that conclusion. Applicant has raised other issues that are not ripe for consideration at this time. Adverse decision remanded.

CASENO: 18-01062.a1

DATE: 08/13/2019

DATE: August 13, 2019

In Re:)	
)	
)	
-----)	ISCR Case No. 18-01062
)	
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 April 30, 2018, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline I (Psychological Conditions), Guideline E (Personal Conduct), Guideline G (Alcohol Consumption), and Guideline H (Drug Involvement and Substance Misuse) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 13, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Nichole L. Noel denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant has raised a due process issue. At the hearing held on November 29, 2018, the Judge left the record open until December 28, 2018, for the parties to submit additional matters. Tr. at 81-82. In the decision, the Judge noted that Department Counsel submitted one additional exhibit and Applicant submitted four. In his appeal brief, Applicant contends the Judge did not mention that she considered certain of his exhibits in conducting her whole-person analysis. These exhibits included Applicant’s credit report, driving record, employment awards and information sheet, drug prescription information, military discharge certificates, and character references. He also stated that the Judge did not acknowledge receipt of four character reference letters that he submitted. He noted the character references included two letters from family members and two from coworkers. The record does not contain the character reference letters, but apparently contains the other exhibits that Applicant referenced.

Applicant has made a *prima facie* showing that exhibits may be missing from the record. We conclude the best resolution of this appeal is to remand the case to the Judge to determine whether documents are missing from the record. If the Judge concludes that documents are missing, she should collect them, consider them, and issue a new decision consistent with Directive ¶ E3.1.35. If the Judge determines that no documents are missing, she should issue a new decision in which she reports the basis for that conclusion. Applicant has raised other issues that are not ripe for consideration at this time.

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