

KEYWORD: Guideline F

DIGEST: Given these circumstances, we conclude the best solution is to remand the case. The Judge is instructed to reopen the record and, working with the parties, determine whether Applicant submitted a FORM Response before the case was submitted to him. If Applicant made such a submission, the Judge should provide Department Counsel an opportunity to object to the submission and then rule on any objections. The Judge should issue a new decision in accordance with Directive ¶ E3.1.35. The Decision is Remanded.

CASE NO: 19-02119.a1

DATE: 09/09/20

DATE: September 9, 2020

In Re:)	
)	
-----)	ISCR Case No. 19-02119
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Mendez, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 14, 2019, 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 June 15, 2020, after considering the record, Administrative Judge Eric H. Borgstrom denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant’s appeal brief contains matters from outside the record, which we are generally precluded from considering. Directive ¶ E3.1.29. However, we have previously considered new evidence when examining threshold issues, such as due process or jurisdiction. *See, e.g.*, ISCR Case No. 14-00812 at 2 (App. Bd. Jul. 8, 2015).

On December 11, 2019, Department Counsel sent Applicant a copy of the File of Relevant Material (FORM). On December 19, 2019, Applicant signed a document acknowledging receipt of the FORM. He was given 30 days from its receipt to submit additional matters to a specified individual at DOHA. His response was due on January 18, 2020. On April 15, 2020, a DOHA memorandum was issued requesting the assignment of a Judge to the case. The memorandum notes that Applicant did not submit a response to the FORM within the allotted time period and that the case file is now complete and ready for consideration. In his brief, Applicant states:

My only argument about the ruling is I do not believe the Judge was presented with all the evidence that was provided to [the name of the adjudicator who issued the SOR]. I talked to her on the phone on 30 Jan 2020 about my case, and during the conversation I explained to her that my 2017 taxes were already filed, and I would send her the supporting document proving that, which I did by email on 30 Jan 2020. [Appeal Brief at 2.]

The documents attached to Applicant’s appeal brief predate his purported submission to the adjudicator. He also indicated the adjudicator never responded to his email, and he interpreted the lack of response to mean she did not require any further supporting documentation.

Based on the above, it appears Applicant may have submitted to the adjudicator an untimely response to the FORM before the case was presented to the Judge for consideration. If so, Department Counsel and the Judge should have been provided Applicant’s FORM response. Department Counsel should then have had an opportunity to object, in whole or in part, to Applicant’s FORM Response, and the Judge should have had an opportunity to rule on any objections. If such events had occurred, it is possible that Applicant’s FORM response may have been considered by the Judge in rendering his decision.

Given these circumstances, we conclude the best solution is to remand the case. The Judge is instructed to reopen the record and, working with the parties, determine whether Applicant submitted a FORM Response before the case was submitted to him. If Applicant made such an submission, the Judge should provide Department Counsel an opportunity to object to the

submission and then rule on any objections. The Judge should issue a new decision in accordance with Directive ¶ E3.1.35.

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