

KEYWORD: Guideline F

DIGEST: In his appeal brief, Applicant asserts that he did not respond to Department Counsel's File of Relevant Material (FORM) because he became seriously ill. In support of that claim, he provided a document from a doctor confirming that he was diagnosed with that serious illness during the 30-day period that he was given to respond to the FORM. The Appeal Board is generally prohibited from considering new evidence. Directive ¶ E3.1.29. However, we may consider new evidence insofar as it bears upon questions of due process or jurisdiction. Applicant's new evidence raises due process concerns. Adverse Decision Remanded.

CASE NO: 20-01353.a1

DATE: 08/11/2021

DATE: August 11, 2021

_____)	
In Re:)	
)	
-----)	ISCR Case No. 20-01353
)	
)	
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 December 7, 2020, 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 May 19, 2021, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Stephanie C. Hess denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant had six delinquent debts totaling about \$46,000. The Judge found against Applicant on each allegation and noted that, although he stated in his SOR response that he was working with an attorney to resolve the debts, he provided no evidence that he has taken any action to do so.

In his appeal brief, Applicant asserts that he did not respond to Department Counsel’s File of Relevant Material (FORM) because he became seriously ill. In support of that claim, he provided a document from a doctor confirming that he was diagnosed with that serious illness during the 30-day period that he was given to respond to the FORM. The Appeal Board is generally prohibited from considering new evidence. Directive ¶ E3.1.29. However, we may consider new evidence insofar as it bears upon questions of due process or jurisdiction. *See, e.g.*, ISCR Case No. 17-01472 at 2 (App. Bd. Aug. 6, 2018). Applicant’s new evidence raises due process concerns.

Based on the above, we conclude the best course of action is to remand the case to the Judge to reopen the record to provided Applicant an opportunity to submit additional evidence. As provided in Directive ¶ E3.1.35, the Judge shall, upon remand, issue a new decision in the case. The Board retains no continuing jurisdiction over a remanded decision. However, a decision issued after remand may be appealed pursuant to Directive ¶¶ E3.1.28. to E3.1.35. *See* Directive ¶ E3.1.35.

As a matter of judicial economy, we note at this stage that Applicant is contending the Judge erred in making a finding about the dates of his unemployment and in finding he had \$25,533 in debt that went into collection on or before March 2017. Applicant also raises 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