

KEYWORD: Guideline F

DIGEST: Screen shots attached to Applicant’s brief confirm the communications on December 7, 2020, and January 13, 2021, noted above. The latter communication shows the FSO had possession of the packet Applicant mailed to the DOHA Legal Assistant and indicated he would stick it in another envelope and forward it. (Although he suggests that he would forward it to the “investigator,” which may explain the problem.) In short, these communications support her contention that she submitted a timely response to the FORM that did not make it into the record. Her appeal brief also indicates that she is living overseas, which also may have complicated communications. Adverse Decision Remanded.

CASE NO: 20-00523.a1

DATE: 08/11/2021

DATE: August 11, 2021

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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 May 15, 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 April 8, 2021, after considering the record, Administrative Judge Paul J. Mason denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. For reasons stated below, we remand the decision.

The SOR alleged that Applicant had 12 delinquent student loans totaling about \$67,800. In responding to the SOR, Applicant admitted the delinquent accounts. The Judge noted that Applicant neither submitted a response to Department Counsel’s File of Relevant Material (FORM) nor corroborated her claims about the student loans. The Judge found against Applicant on each of the alleged student loans, concluding there are no indications her indebtedness is being reduced or is under control.

Applicant’s appeal brief raises a due process issue. In support of that issue, her brief contains assertions and screen shots of text messages that were not presented to the Judge for consideration. 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).

In her brief, Applicant basically contends that she submitted matters in response to the FORM that were not presented to the Judge. Specifically, she states:

Please be advised that on **December 7, 2020**, my FSO [name deleted] stated that he would be sending me a packet to complete and turn in as soon as possible. I received the package on December 8, 2020. The next day on **December 9, 2020**, I was able to complete all the necessary information and send it off to the address provided in the body of the email. Evidence shows screen shots of the email exchange between [the FSO] and me. Once the package . . . which contained evidence of my financial aid payments and deferments along with responses to the allegations on why some of my loans were not paid on time. This package was detailed and contained information that would have allowed the judge more evidence to use to base his/her decision on. As shown in the screen shots, once I sent the package off, I did not receive any correspondence from [the FSO] until **January 13, 2021**, stating he received the packet, and it always shows the email chain insinuating that it was sent to the wrong address that he would redirect the packet to the correct address. For months following, I would email [the FSO] and call him with absolutely no luck. I was finally able to receive the decision “unfavorable” after months of attempting to receive an update on my case from my FSO. [Appeal Brief at 1.]

The screen shots attached to Applicant’s brief confirm the communications on December 7, 2020, and January 13, 2021, noted above. The latter communication shows the FSO had possession of the packet Applicant mailed to the DOHA Legal Assistant and indicated he would stick it in another envelope and forward it. (Although he suggests that he would forward it to the “investigator,” which may explain the problem.) In short, these communications support her contention that she submitted a timely response to the FORM that did not make it into the record. Her appeal brief also indicates that she is living overseas, which also may have complicated communications.

Based on the above, we conclude the best course of action is to remand the case to the Judge to reopen the record to provide 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.

**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