

KEYWORD: Guideline J; Guideline H; Guideline E

DIGEST: At the hearing, the Judge left the record open until May 21, 2021, for Applicant to submit additional matters. Tr. At 71-72 and 77-78. In the decision, the Judge noted Applicant did not submit any additional matters. In his appeal brief, Applicant contends that he submitted matters on May 20, 2021. There are documents that tend to support Applicant's contention. Decision is Remanded.

CASE NO: 19-01504.a1

DATE: 09/03/2021

DATE: September 3, 2021

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In Re:	)	
-----	)	ISCR Case No. 19-01504
	)	
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 July 15, 2019, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct), Guideline H (Drug Involvement and Substance Misuse), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Department Counsel requested a hearing. On June 10, 2021, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether Applicant submitted documentary evidence that was not included in the record and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we remand the case to the Judge.

Applicant’s appeal brief contains matters from outside the record, which we are generally precluded from considering. Directive ¶ E3.1.29. We will, however, 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).

At the hearing, the Judge left the record open until May 21, 2021, for Applicant to submit additional matters. Tr. at 71-72 and 77-78. In the decision, the Judge noted Applicant did not submit any additional matters. In his appeal brief, Applicant contends that he submitted matters on May 20, 2021.

In resolving cases in which applicants claim to have submitted documents that were not received, we generally examine the record and the briefs to see whether there is any support for this claim. *See, e.g.*, ISCR Case No. 15-03712 at 2 (App. Bd. Jan. 11, 2018). At the hearing, the Judge asked Applicant if he had any character reference letters or pictures of awards that he could send to him. Applicant said he would provide those matters. Tr. at 69-72. We note Applicant’s brief contains two character reference letters that were prepared shortly before the post-hearing submission deadline. It also contains pictures of employment awards that he indicated he would provide to the Judge. These documents tend to support Applicant’s claim that he submitted matters the Judge did not receive.

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