



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 APPEAL BOARD
 POST OFFICE BOX 3656
 ARLINGTON, VIRGINIA 22203
 (703) 696-4759**

KEYWORD: Guideline F

DIGEST: Applicant’s appeal brief raises a due process issue. His brief contains a declaration signed by him that asserts he emailed a response to the FORM before the deadline and contains copies of documents that he claims were submitted with that response. In this regard, 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 a question of due process. Decision is Remanded.

CASE NO. 20-01759.a1

DATE: 10/21/2021

Date: October 21, 2021

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| In the matter of: |) | |
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| |) | |
| ----- |) | ISCR Case No. 20-01759 |
| |) | |
| Applicant for Security Clearance |) | |
| _____ |) | |

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Christopher Macchiaroli

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 4, 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 DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On June 7, 2021, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson 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 nine delinquent debts totaling about \$55,000. In responding to the SOR, Applicant admitted the delinquent accounts. The Judge noted that Applicant did not submit a response to Department Counsel’s File of Relevant Material (FORM). The Judge found against Applicant on each SOR allegation, noting he failed to present documentation of a payment history that showed progress in resolving the debts.

Applicant’s appeal brief raises a due process issue. His brief contains a declaration signed by him that asserts he emailed a response to the FORM before the deadline and contains copies of documents that he claims were submitted with that response. In this regard, 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 a question of due process. *See, e.g.*, ISCR Case No. 17-01472 at 2 (App. Bd. Aug. 6, 2018).

We note that Applicant’s FORM response was apparently sent to the wrong address. The cover letter forwarding the FORM to Applicant indicated that his response should be sent to a DOHA Legal Assistant. Contrary to that guidance, he emailed his response to an address at the Consolidated Adjudications Facility (CAF) of the Defense Counterintelligence and Security Agency (DCSA). Although Applicant did not comply with the directions provided in the cover letter, 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 the FORM response he sent to the DCSA CAF.

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. through E3.1.35. Applicant’s brief contains other assignments of error that are not ripe for our 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