

KEYWORD: Guideline F

DIGEST: A Judge is required to prepare a full and complete record. See Directive ¶¶ E3.1.19 and E3.1.29. Failure to create or preserve a complete record is error and can impair the Board’s ability to perform our review function. Because the record appears to be incomplete, we are remanding it to the Judge to address this purported error. Decision is Remanded.

CASE NO: 19-02993.a1

DATE: 04/28/2021

DATE: April 28, 2021

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In Re:)	
-----)	ISCR Case No. 19-02993
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION AND REMAND ORDER

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel
Nicholas T. Temple, Esq., Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 24, 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 hearing. On February 3, 2021, after the hearing, Defense Office of Hearings and Appeals (DOHA) Judge Robert Robinson Gales granted Applicant’s request for a security clearance. Department Counsel appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. For reasons stated below, we remand.

Record Issue

As a threshold matter, a question exists about whether the record of this proceeding is complete. At the hearing held on December 14, 2020, the Judge requested Department Counsel provide an additional credit report in a post-hearing submission by stating:

It’s apparent to me that the OPM investigator had a combined credit report, which to me is much better than the Equifax credit report, which is -- everything is useless. But if we can get a combined credit report, so we can identify which accounts are duplicated, if they are duplicated, that would be helpful.

And I will give you the same opportunity, for you to submit to me and to [Applicant], and so everybody had all the information. [Tr. at 123.]

A couple hours after the hearing, Department Counsel sent the Judge an email that had two credit reports attached and offered those documents into evidence as Government Exhibit (GE) 4 and 5. Those documents consisted of a combined credit report dated March, 21, 2019, and an Equifax credit report dated December 14, 2020. Attachment 4 to Department Counsel’s Appeal Brief. Of note, the Board may consider new evidence on appeal to address a due process issue, including whether the record is missing evidence that a party presented below. *See, e.g.*, ISCR Case No. 19-01011 at 3 (App. Bd. Jan. 30, 2020). Department Counsel also forwarded the proffered exhibits to Applicant separately. Department Counsel’s email of December 14, 2020.

The record of the proceeding closed on January 13, 2021 (Decision at 2), and it does not contain the two credit reports that Department Counsel submitted after the hearing ended on December 14, 2020. In the decision, the Judge identifies the exhibits the parties submitted and that description does not include the credit reports that Department Counsel proffered as GE 4 and 5.

A Judge is required to prepare a full and complete record. *See* Directive ¶¶ E3.1.19 and E3.1.29. Failure to create or preserve a complete record is error and can impair the Board’s ability to perform our review function. *See, e.g.*, ISCR Case No. 19-01011 at 3. Because the record appears to be incomplete, we are remanding it to the Judge to address this purported error.

Other Issues

Department Counsel has raised other issues. These include:

1. Department Counsel notes there is an apparent disconnect in the number of Applicant's exhibits (AE). The decision reflects that AE A through R were admitted into evidence. Decision at 2. In the findings of fact, however, the Judge makes reference to AE S. From our review of Applicant's exhibits, AE S is a duplicate of AE B, *i.e.*, the list of debts in a debt resolution program.

2. Department Counsel challenges the Judge's comment regarding credit reports. The Judge's comment reads in pertinent part:

[T]here is a substantial risk when one accepts, at face value, the contents of credit reports without obtaining original source documentation to verify entries. Credit bureaus collect information from a variety of sources, including public records and "other sources," and it is these other unidentified sources that are the cause of concern. Likewise, when accounts are transferred, reassigned, sold, or merely churned, an individual's credit history can look worse than it really is. In this particular instance, the credit report referred to numerous creditors for several delinquent accounts. Because of a abbreviated names and acronyms, multiple and partial numbers for the same account listed several times under different creditors, debt purchasers, or collection agents, many of those entries are garbled and redundant, and have inflated the financial concerns. One can conclude that the information in the credit report – actually a summary or secondary evidence pertaining to an account – is less accurate, trustworthy, or reliable than other evidence of record. [Decision at 11-12.]

Since the Judge must issue a new decision, this issue is not yet ripe of adjudication.

3. Department Counsel argues that the Judge's mitigation analysis runs counter to the record evidence and fails to consider important aspects of the case. They contend the 17 debts listed in Applicant's debt resolution program, including the two that have been resolved, are not debts listed in the SOR. More specifically, they challenge to the Judge's conclusion that the debts in SOR ¶¶ 1.b and 1.q have been resolved. They note that Applicant has multiple accounts with some creditors and contend that, because the debt resolution program documentation does not list account numbers, it is impossible to determine which accounts are in that program. They also assert that Applicant's installment agreements with various creditors do not address any of the alleged debts and none of those agreements reflect that actual payments are being made towards the debts. They further argue the Judge failed in his mitigation analysis to consider Applicant's current financial circumstances, his taking of international vacations while unemployed, his purchase of an expensive vehicle that he cannot afford to operate, and his acquisition of additional debts. This issue is also not yet ripe for adjudication.

Conclusion

The decision is remanded to the Judge to ensure the record contains all of the post-hearing documents that were submitted. If additional documents are admitted into evidence, they should be considered in issuing the new decision that Directive ¶ E3.1.35 requires on remand. The Board

retains no continuing jurisdiction over a remanded decision. However, a Judge's decision issued after remand may be appealed pursuant to Directive ¶¶ E3.1.28. and E3.1.30.

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