



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

Date: June 13, 2022

In the matter of:)	
)	
-----)	ISCR Case No. 19-03523
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Bryan Olmos, Esq., Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 28, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis of that decision—security concerns raised under Guideline D (Sexual Behavior), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 22, 2022, after close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative 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.

An examination of the record reveals that it may not be complete. In his brief, Department Counsel noted the Judge requested at the hearing that Applicant provide a complete copy of the records of the treatment he received from a psychologist. Appeal Brief at 6, quoting from Tr. at 45. Department Counsel also argued that “Applicant produced none of the additional material.

Instead, he provided [a record from his primary care physician] showing ongoing treatment for depression.” *Id.* In his reply brief, Applicant argues that statement is false, claiming he submitted in a timely manner 30 additional “documents” from the psychologist, including “every record he held[,]” as well as records from his primary care physician. Reply Brief at 2. In the decision, the Judge noted he received two post-hearing documents from Applicant that were marked as Applicant’s Exhibits F (a three-page final report from the primary care physician) and G (a one-page Order of Termination of Probation from a county court).

Based on the foregoing, we conclude the best resolution is to remand this case for the Judge to determine whether the record is complete. On remand, the Judge is required to issue a new decision. Directive ¶ E3.1.35. 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: James F. Duffy
James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Member, Appeal Board

Signed: Jennifer I. Goldstein
Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board