

Date: July 8, 2022

In the matter of:)	
)	
)	
-----)	ISCR Case No. 20-02265
)	
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 September 6, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) and Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On April 27, 2022, 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.

As a threshold matter, we note a procedural defect in the Judge’s decision under Executive Order 10865, Safeguarding Classified Information Within Industry, dated February 20, 1960, as amended. In her decision, the Judge did not make formal findings for or against Applicant on the specific SOR allegations. Instead, similar to decisions issued under DoD Manual 5200.02, Procedures for the Personnel Security Program (PSP), she merely found against Applicant on the

two alleged guidelines without addressing the specific allegations. Section 3(7) of Executive Order 10865 provides that an adverse security clearance decision shall make findings for or against an applicant with respect to each SOR allegation. *See also* Directive ¶ E3.1.25 (stating a clearance decision shall set forth “conclusions as to the allegations in the SOR”) and ISCR Case No. 08-07803 at 2 (App. Bd. Sep. 21, 2009). Highlighting this point, we note the Judge made no formal finding on a Guideline B allegation pertaining to one of Applicant’s foreign relatives who is now deceased. The Judge’s error impacts the Board’s review of the decision and potentially Applicant’s rights under the Directive. *See, e.g.*, Directive ¶ E3.1.38. The Judge’s decision is remanded to correct this error.

Upon remand, a judge is required to issue a new decision after correcting identified error(s). *See* 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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

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