

Date: January 12, 2023

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In the matter of: )  
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)  
Applicant for Security Clearance )  
\_\_\_\_\_)

ISCR Case No. 19-03949

**APPEAL BOARD DECISION AND REMAND ORDER**

**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 April 10, 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 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On November 28, 2022, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Gregg A. Cervi denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant had ten delinquent debts totaling about \$25,000. The Judge found against Applicant on eight of those allegations. On appeal, Applicant raises a due process issue that merits remand.

Applicant’s appeal brief contains assertions and documents that are not in the record. 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 questions of due process or jurisdiction. *See, e.g.*, ISCR Case No. 17-01472 at 2 (App. Bd. Aug. 6, 2018).

In her brief, Applicant notes that the Judge made findings that she presented no evidence of making payments towards certain alleged debts and asserts she emailed evidence of such payments to Department Counsel both before and after the designated date for the record to close. In the reply brief, Department Counsel stated he has no objection to the Board remanding the case to the Judge so that he may consider the submitted documents that are not contained in the record.

Based on the above, we conclude the best course of action is to remand the case to the Judge to reopen the record to correct the above-identified error. Directive ¶ E3.1.35 requires the Judge to issue a new decision upon remand. 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: James F. Duffy  
James F. Duffy  
Administrative Judge  
Chairperson, Appeal Board

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

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