

Date: January 23, 2023

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In the matter of:	)	
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-----	)	ISCR Case No. 21-02817
	)	
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 January 11, 2022, 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 decision on the written record. On December 19, 2022, after considering the record, Administrative Judge Arthur E. Marshall denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant’s appeal brief contains matters from outside the record, which we are generally precluded from considering. Directive ¶ E3.1.29. However, we have previously considered new evidence when examining threshold issues, such as due process or jurisdiction. *See, e.g.*, ISCR Case No. 14-00812 at 2 (App. Bd. Jul. 8, 2015). Applicant’s appeal brief raises such a due process issue, as he asserts that he submitted materials in response to the FORM that were not forwarded to or considered by the Judge.

The SOR alleged 17 delinquent debts that totaled about \$48,000. In his Answer to the SOR, Applicant admitted the debts and submitted documentation of his ongoing efforts to resolve the debts. On May 13, 2022, Department Counsel sent Applicant a copy of the File of Relevant Material (FORM). On May 23, 2022, Applicant signed a document acknowledging receipt of the FORM. That correspondence afforded him 30 days from its receipt—until June 22, 2022—to submit additional matters to DOHA.

From the record and appeal brief before us, it appears that Applicant responded to the FORM on May 24, 2022, but that he mailed his cover letter and supporting documents to DoD's adjudication office at Fort Meade rather than to DOHA. Applicant followed up this initial hard-copy response with email correspondence to Department Counsel on June 6, 2022, and again on June 22, 2022. That email correspondence, however, did not contain any supporting documents from the initial hard-copy response. In other words, the FORM was submitted to the Judge with the email correspondence sent to Department Counsel, but lacking the documents sent to Fort Meade. The Judge issued his decision on December 19, 2022.<sup>1</sup> In his appeal, Applicant requests that his FORM response be taken into consideration.

Given these circumstances, we conclude the best solution is to remand the case to the Judge so that he may reopen the record to correct this error. Directive ¶ E3.1.35 requires the Judge to issue a new decision on 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.

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<sup>1</sup> Although the Judge states in his decision that Applicant did not respond to the FORM, he later cites to items that Applicant submitted by email correspondence to Department Counsel. From our review, it appears that the Judge received and considered the matters that Applicant submitted by email to Department Counsel.

**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: Gregg A. Cervi

Gregg A. Cervi  
Administrative Judge  
Member, Appeal Board