



**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: May 25, 2023

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 In the matter of:)
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)
 Applicant for Security Clearance)
 _____)

ISCR Case No. 22-01323

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 July 20, 2022, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent 4, effective June 8, 2017, and DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On March 22, 2023, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Braden M. Murphy concluded that it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

On appeal, Applicant contends that the Judge’s decision should be remanded because matters he submitted were not presented to the Judge for consideration. We agree.

On September 22, 2022, the Government’s FORM was mailed to Applicant. On September 30, 2022, Applicant signed a document acknowledging receipt of the FORM. The FORM and its forwarding letter advised Applicant that he had 30 days from its receipt to file objections or submit any additional evidence in rebuttal, explanation, extenuation, or mitigation. His FORM response was due on October 30, 2022. On an unspecified date, Applicant submitted a response to the FORM that consists of 30 pages. Department Counsel had no objection to that response, and it is in the record. The Judge was assigned the case on December 2, 2022.

Applicant’s appeal brief contains seven pages that he claims were submitted to DOHA but not entered into the record. In support of this claim, he provided a fax verification record showing that he faxed seven pages to DOHA on November 5, 2022, and he also submitted an email to DOHA on November 6, 2022, seeking confirmation of his fax’s receipt. No response to that email was provided. Even though the faxed documents in question were submitted five days after the FORM response deadline, those documents should have been presented to Department Counsel for any objections or comments and then to the Judge for a determination as to whether they would be entered into the record and considered.

Based on the above, we conclude the best course of action is to remand the case to the Judge to reopen the record to determine whether the documents Applicant submitted on November 5, 2022, should have been entered in the record and considered. 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.

Order

The decision is **REMANDED**.

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Chair, Appeal Board

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

Signed: Allison Marie
Allison Marie
Administrative Judge
Member, Appeal Board