



**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: October 18, 2023

In the matter of:)	
)	
-----)	ISCR Case No. 22-02162
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Christopher Snowden, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 2, 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 the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). On August 22, 2023, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. For reasons stated below, we remand the Judge’s decision because of a procedural due process issue.

The SOR contains 17 allegations that assert Applicant failed to file his Federal tax return for 2019 as required, that he was indebted to the Federal Government for delinquent taxes for 2012, and that he had 15 delinquent consumer debts. In his SOR Response, Applicant indicated that he did not “wish to set a court date to explain my case.” Because Applicant did not request a hearing, the case was appropriately processed for a decision based on the written record. Directive ¶ E3.1.7. Department Counsel prepared a File of Relevant Material (FORM) that was sent to

Applicant on March 15, 2023. Applicant received the FORM the same day, and he was given thirty days from its receipt to submit any objections or additional matters for the Judge to consider. Applicant's response was due on April 14, 2023. The record reflects that Applicant did not submit a response to the FORM and the Judge based his decision on the written matters presented to him.

On appeal, Applicant contends that his right to a hearing was denied. Applicant's appeal brief includes a letter from a law firm dated March 20, 2023, indicating that he requested a hearing. This letter was not sent to the Department Counsel who signed the FORM, whose office is in Woodland Hills, California. Instead, the letter was emailed to DOHA personnel in Arlington, Virginia.¹ The hearing request was apparently never delivered to Department Counsel or the Judge before the decision was issued.

The Appeal Board is aware that an applicant's request for a hearing submitted before expiration of the FORM response deadline is routinely granted. In its reply brief, the Government indicates that "a remand is in the best interests of fairness for both parties and the established administrative process." Reply Brief at 7. Given these circumstances, we are remanding the case to the Judge so that Applicant may be provided an opportunity to have a hearing. Upon remand, a Judge is required to issue a new decision. Directive ¶ E3.1.35. The Board retains no jurisdiction over a remanded decision. However, the Judge's decision issued after remand may be appealed pursuant to Directive ¶¶ E3.1.28 and E3.130.

Order

The Judge's adverse security clearance decision is **REMANDED**.

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

Signed: Gregg A. Cervi
Gregg A. Cervi
Administrative Judge
Member, Appeal Board

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

¹ The DOHA letter transmitting the FORM to Applicant indicated that any response should be sent to the Woodland Hills address. The email forwarding the hearing request included the Deputy Chief Department Counsel as an addressee, however, it was not sent to her correct email address, and she never received it. Reply Brief at 6-7.