



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: March 26, 2024

<p>In the matter of:</p> <p style="text-align: center;">-----</p> <p>Applicant for Security Clearance</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>ISCR Case No. 22-00705</p>
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Mendez, Esq., Chief Department Counsel

FOR APPLICANT

Christopher Snowden, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 15, 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 Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On January 10, 2024, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Charles C. Hale denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge failed to consider documentary evidence that was timely submitted but not included in the record. Consistent with the following, we remand the case to the Judge.

Applicant's appeal brief contains matters from outside the record, which we are generally precluded from considering. Directive ¶ E3.1.29. We may, however, consider new evidence insofar as it bears upon questions of due process or jurisdiction.

At hearing on July 5, 2023, the Judge admitted Applicant Exhibits (AE) A–T. At Applicant's request, the Judge held the record open until July 19, 2023, to allow for the submission of additional documents. Tr. at 102. By email of July 7, 2023, Applicant requested and was granted an extension until July 28, 2023. Appeal Brief at 14–15. On July 28, 2023, Applicant submitted six documents by email, marked AE U–Z, and the Judge acknowledged receipt on July 31, 2023. *Id.* at 13–14.

The record before the Appeal Board and email correspondence submitted with Applicant's appeal support his claim that he submitted matters that were received but not included in the record. In his decision, the Judge refers only to AE A–T, and he does not mention either holding the record open or receiving additional documents after the hearing. Moreover, the record before the Appeal Board does not contain AE U–Z.

Based on the above, we conclude the best course of action is to remand the case to the Judge to reopen the record to provide Applicant an opportunity to submit AE U–Z. As provided in Directive ¶ E3.1.35, the Judge shall, upon remand, issue a new decision in the case. 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: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: James B. Norman

James B. Norman
Administrative Judge
Member, Appeal Board

Signed: Gregg A. Cervi

Gregg A. Cervi
Administrative Judge
Member, Appeal Board