



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: January 27, 2025

In the matter of:)	
)	
-----)	ISCR Case No. 23-02555
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Andrea Corrales, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 27, 2024, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline H (Drug Involvement and Substance Misuse) 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 (Jan. 2, 1992, as amended) (Directive). Along with her answer to the SOR, Applicant requested a decision based on the written record, without a hearing. She was provided with the Government’s File of Relevant Material (FORM) and was given the opportunity to submit a response. After no response was received, the case was forwarded to DOHA’s Hearing Office for decision. On November 6, 2024, Defense Office of Hearings and Appeals Administrative Judge Candace Garcia denied Applicant security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Discussion

On appeal, Applicant asserts that on May 10, 2024, she responded to the Government’s FORM and included, among other things, a request to convert the case to a hearing. Appeal Brief at 1. In support of this, her appeal brief contains a copy of her response. Although matters from outside the record are generally precluded from consideration on appeal, we have previously

considered new evidence when examining threshold issues such as due process or jurisdiction. Directive ¶ E3.1.29; *e.g.* ISCR Case No. 19-02119 at 2 (App. Bd. Sep. 9, 2020). Applicant's assertion that she requested a hearing is such an instance.

Applicant acknowledges that her request to convert her case to a hearing was sent to an incorrect DoD address and, therefore, not received by the Government or the Judge. However, the Government concurs that Applicant made a timely request for a change of forum and does not object to a remand of the case. Given these circumstances, we conclude the best resolution of this appeal is to remand the case to the Judge for a hearing. *See* ISCR Case No. 20-00388 at 2 - 3 (App. Bd. Mar. 22, 2021) (case remanded when request for extension was sent to the Consolidated Adjudications Facility rather than Department Counsel). Applicant has raised other issues that are not ripe for consideration at this time. 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 in ISCR Case No. 23-02555 is **REMANDED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board

Signed: James B. Norman

James B. Norman
Administrative Judge
Member, Appeal Board