DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD

Date: May 19, 2026

In the matter of:	)	
----------	)	ISCR Case No. 25-00833
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
Andrea M. Corrales, Esq., Deputy Chief Department Counsel

FOR APPLICANT
Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On July 22, 2025, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of 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 (Jan. 2, 1992, as amended) (Directive). On March 31, 2026, Defense Office of Hearings and Appeals Administrative Judge Benjamin R. Dorsey denied Applicant national security eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged three delinquent debts totaling approximately $85,300. Two of the alleged debts are owed to the same creditor (SOR ¶¶ 1.a and 1.b) and represent about $74,300 of the total debt. In his Answer to the SOR (Answer), Applicant admitted the debts, with explanations and elected a decision on the written record. On appeal, Applicant raises a due process issue, as he asserts that he submitted materials in his Answer that were not included in the record and not considered by the Judge. Finding merit, we remand.

In his Answer, Applicant included an exhibit list that identified and described Exhibits A through U, which were purportedly submitted with his Answer. In his explanations as to the status

of the debts, Applicant referred to various exhibits to corroborate his action on the delinquencies. In particular, Applicant referred to Exhibit S, which he characterized as a "formal repayment plan," as proof that he had initiated payment for the two large debts alleged at SOR ¶¶ 1.a and 1.b. Answer at 1 and 4. The Answer in the record, however, contains only Exhibits A and T; it does not include Exhibits B through S or Exhibit U.

In preparing the File of Relevant Material (FORM), Department Counsel highlighted the lack of corroborating evidence and in a footnote identified that "most of the intended exhibits, including exhibit S, were not included in the submission to DCSA." FORM n. 6 at 3. Despite this footnote, Applicant apparently did not understand at that time that his Answer of record was incomplete, and he did not address or rectify the matter in his response to the FORM.

In his decision, the Judge noted, "In the Answer, [Applicant] claimed that he included attachments that he identified as Exhibits A through U. However, these documents were not included as part of the Answer." Decision at 2. The Judge did note receiving Applicant's character-reference letters. *Id*. at 4.

On appeal, Applicant contends that the missing materials include child support payments, creditor communication attempts, payment plan documentation, employment and income verification, and reference letters. Those documents, he argues, pertained directly to his case in mitigation. In the dual interests of ensuring public confidence and assessing if Applicant was provided "a fair and impartial common-sense determination based upon consideration of all the relevant material information" as required by DoD Directive 5220.6 § 6.3, Appeal Board staff contacted Applicant to determine if he had proof that he had previously submitted the exhibits as claimed. To substantiate his claim on appeal, Applicant submitted an automated email receipt dated September 4, 2025, documenting that he submitted a zip file to DCSA with his Answer to the SOR. Our review confirmed that the zip file contained the missing exhibits, and we provided the email correspondence and missing documents to the Government.

While we cannot consider new evidence on Appeal, Applicant has made a prima facie showing that exhibits submitted to DCSA were missing from the record that was considered by the Judge. We conclude the best resolution of this appeal is to remand the case to the Judge to allow him to consider the complete Answer to the SOR and to issue a new decision consistent with Directive ¶ E3.1.35. The other issues Applicant raises in his appeal are not ripe for consideration at this time.

Order

The decision in ISCR Case No. is **REMANDED**.

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

Signed: Jennifer Goldstein
Jennifer Goldstein
Administrative Judge
Member, Appeal Board

Separate Opinion of Board Member Allison Marie

Remand for consideration of Applicant's additional evidence is supported neither by the Directive nor by Appeal Board precedent.

An applicant's right to timely present evidence for consideration in his or her case is an important one.[1] All applicants, however, including those that are *pro se*, are expected to take timely and reasonable steps to protect their rights under the Directive, which steps "necessarily include becoming sufficiently knowledgeable about the processing of one's case," which itself includes "careful consideration of documents submitted by the Government." ISCR Case No. 12-00120, 2014 WL 1101313 at *3 (App. Bd. Feb. 10, 2014). An applicant's failure to take timely, reasonable steps to protect their rights does not constitute a denial of those rights.

The SOR, issued on July 22, 2025, alleged three delinquent debts placed for collection for approximately $85,000. In his September 2025 Answer, Applicant admitted the allegations, discussed his financial circumstances, explained how the alleged debts were incurred, and asserted his efforts to address the two largest debts beginning on July 21, 2025, including subsequently making a $1,600 lump sum payment and establishing a $150 per month repayment plan.[2] Applicant's Answer included an exhibit list identifying Exhibits A through U, and he cited Exhibit S to support his purported resolution efforts; however, only documents identified at Exhibits A and T were attached to the Answer, along with four unlisted character reference letters, an affidavit, and a credit report. He requested that his case be decided based on the written record.

[1] *See* ISCR Case No. 02-20031, 2004 WL 2152724 at *3 (App. Bd. Aug. 31, 2004).

[2] *See* Government Exhibit (GE) 2 at 2. Notably, Applicant asserted elsewhere in his Answer, "As of this filing, I have approximately 60 days remaining on my current deployment. During this period, I *will* transfer $1,600 to [the creditor] and *request* a payment plan of $150/month applied to each account." *Id*. at 17 (emphasis added).

The Government's resulting FORM included its argument against Applicant's national security eligibility and supporting exhibits. In the FORM's argument, the Government repeatedly identified the absence of evidence corroborating Applicant's purported repayment efforts,[3] and specifically noted the absence of Exhibit S from the record.[4] The FORM also advised Applicant multiple times that, if he did not file objections or submit additional information, his case would be assigned to a judge for a determination "*based solely upon the enclosed FORM*." FORM Transmittal Letter (emphasis added).[5] Applicant responded to the FORM by addressing the Government's argument and exhibits with specificity, advocating for application of specific mitigating conditions, and providing some additional documentation. He did not provide the materials absent from his Answer.

It is long and well settled that, absent a showing that an applicant was denied a reasonable opportunity to prepare for the proceeding below or to present evidence on his or her behalf, an applicant is not entitled to have another chance to present his or her case.[6] Even assuming most favorably to Applicant that he included or attempted to include the documentation with his Answer, he was notified of the evidentiary gap and afforded a reasonable opportunity to present his evidence again in response to the FORM. For whatever reason, he did not. If Applicant wanted the Judge to consider matters in his possession that were not contained in the FORM, it was his obligation to provide them in response thereto.

Moreover, a party is normally expected to timely raise objections or similar claims of error during the proceedings before the judge to preserve them for appeal. While the Board has recognized that there may be situations where a party cannot reasonably be expected to raise a claim of error until after receiving the judge's decision,[7] the instant case is not such a situation.[8]

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[3] *See* FORM at 3 ("The Answer asserts that he had payment plans on two of three delinquent accounts, but has not provided any corroborative evidence of the agreements or payment."); *id*. at 3, n.11 ("Applicant claims that on July 21, 2025, he contacted [the creditor] and made a $1,600 lump sum payment on allegations 1.a and 1.b and enter[ed] into a $150/month repayment plan. The claim is uncorroborated."); *id*. at 5 ("The record is absent of evidence that the debts are . . . satisfied and resolved."); *id*. ("The Appellant's first alleged payment in August 2025 is not supported by corroborating evidence.").

[4] *See* FORM at 3*,* n.6 ("The Answer's exhibit list identifies Exhibit S as proof of payment and agreement. However, most of the intended exhibits, including exhibit S, were not included in the submission.").

[5] *See also* FORM at 5 ("If you do not file any objections or submit any additional information within 30 days of receipt of the letter, your case will be assigned to an Administrative Judge for a determination based solely on the FORM.").

[6] *See* ISCR Case No. 04-01047, 2005 WL 4050158 at *3 (App. Bd. Oct. 20, 2005). *See also* ISCR Case No. 00-0250 at 2-3 (App. Bd. Feb. 13, 2001) ("Absent a showing of harmful error that affects a party's right to present evidence in the proceedings below, a party does not have any right to have a second chance at presenting its case before an Administrative Judge.").

[7] The Board has routinely remanded cases where an applicant's *FORM Response* was not considered by the judge – i.e., where the applicant's earliest awareness of the issue arose from the decision and there was no earlier opportunity to address it. *See, e.g.*, DISCR OSD Case No. 92-0898, 1993 WL 133267 (Apr. 19, 1993) (remand where FORM response was not considered by the judge); ISCR Case No. 04-07825, 2006 WL 2525478 (App. Bd. Jan. 18, 2006) (remand where FORM response was not included in the record); ISCR Case No. 14-06467, 2016 WL 1076954 (App. Bd. Feb. 24, 2016) (remand where documents submitted with FORM response were not included in the record).

[8] *See, e.g.*, ISCR Case No. 24-00658, 2025 WL 736648 (App. Bd. Feb. 27, 2025) (remand not warranted where, even though appeal established that a document submitted pursuant to an interrogatory response was omitted from the

Here, Applicant was explicitly notified *five times* in the FORM's argument and implicitly notified through the FORM exhibits that the documents he claimed to have attached to his Answer were not in the record. His failure to subsequently provide those documents, despite multiple notifications, does not amount to a due process error or warrant any remedy on appeal.

Finally, even assuming, *arguendo*, that Applicant's additional Answer documents should have been included and considered in the record below, any error resulting therefrom would not have affected the ultimate outcome of the case considering the amount of Applicant's delinquent debt, the recency of his attempt to initiate resolution, and the absence of a track record of repayment.[9] Indeed, after first analyzing the existing record, the Judge went on to consider crediting Applicant for some of his purported, but undocumented payments, and still concluded the SOR concerns were unmitigated based on the aforementioned factors.

Under the circumstances, there is no basis to remand the case for consideration of additional evidence. Applicant has failed to demonstrate harmful error below and the Judge's adverse decision should be affirmed.

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

FORM, the applicant was sufficiently notified via the FORM transmittal letter and the FORM itself of what evidence was being submitted to the judge and of his opportunity to supplement that evidence).

[9] *See* ISCR Case No. 00-0250, 2001 WL 1044486 at *5 (App. Bd. Jul. 11, 2001) (discussing harmless error doctrine). The Board has opined that remand may still not be warranted if, considering the missing material, the error was harmless. *See, e.g.*, ISCR Case No. 24-00658, 2025 WL 736648 (scant information contained in missing evidence would not have resulted in a different outcome); ISCR Case No. 91-0422, 1994 WL 449481 at *2, n.2 (App. Bd. Jun. 2, 1994) (any error from purported Answer attachments being omitted from FORM was harmless because, based on the facts of the case, the error would not be outcome determinative).