

KEYWORD: Guideline F

DIGEST: In a case where the Judge makes multiple findings about an applicant which have no foundation in the record the case must be remanded for issuance of a new decision which is bases on the record. Adverse decision remanded.

CASENO: 11-01393.a1

DATE: 07/25/2012

DATE: July 25, 2012

In Re:	)	
	)	
-----	)	ISCR Case No. 11-01393
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 26, 2011, DOHA 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 Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 1, 2012, after the hearing, Administrative Judge Thomas M. Crean denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge's findings of fact are based on substantial record evidence; and whether the Judge's decision is contrary to the weight of the record evidence and, therefore, arbitrary, capricious, or contrary to law. Consistent with the following, we remand the case to the Judge for issuance of a new decision.

As a threshold issue we address Applicant's contention that the Judge made several findings of fact which have no basis in the record evidence. Specifically, Applicant contests the Judge's findings that he is married, that his wife is in nursing school, that he (and his wife) received counseling from the church, that he has a mortgage, and that he applied for a Top Secret Clearance. Department Counsel agrees with Applicant that the aforesaid findings are erroneous.

Department Counsel contends that the erroneous findings are harmless. We do not agree. The Judge refers back to several of them in his analysis. Applicant reasonably asks whether the Judge was relying on another person's file when preparing Applicant's decision. The Board has previously noted that one premise essential to the concept of due process is a meaningful opportunity to respond. Public confidence in the industrial security program relies in part on the appearance of a fair and impartial adjudication in light of the record as a whole. In a case where the Judge makes multiple findings about an applicant which have no foundation in the record, the Judge's decision is undermined and so is confidence in the industrial security program. The case must be remanded for issuance of a new decision which is based on the record in Applicant's case. *See* ISCR Case No. 02-23979 (App. Bd. Aug. 25, 2004); ISCR Case No. 02-07191 (App. Bd. Mar. 25, 2004); and ISCR Case No. 01-05500 (App. Bd. Apr. 15, 2003).

It is premature to address the other issue raised by Applicant on appeal.

### **Order**

The case is REMANDED to the Judge for issuance of a new decision consistent with the Board's conclusions and rulings.

Signed: Michael Y. Ra'anan  
Michael Y. Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody \_\_\_\_\_  
James E. Moody  
Administrative Judge  
Member, Appeal Board