

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant submitted documents before the close of the record which were received by Department Counsel but not timely forwarded to the Judge. Adverse decision remanded.

CASENO: 12-02827.a1

DATE: 05/08/2014

DATE: May 8, 2014

In Re:	)	
	)	
-----	)	ISCR Case No. 12-02827
	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 28, 2013, DoD 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 January 24, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Thomas M. Crean denied Applicant’s

request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge’s decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board remands the case to the Judge.

The Board notes a threshold issue raised by Applicant. In his brief he makes the representation that he submitted evidentiary matters after the hearing that were not considered by the Judge. As such, Applicant has made representations from outside the record. As a general rule, the Board cannot consider new evidence on appeal. Directive ¶ E3.1.29. However, in the past, the Board has considered new evidence or assertions outside the record insofar as it raises questions of due process or jurisdiction. *See, e.g.*, ISCR Case No. 12-01038 at 1-2 (App. Bd. Mar 22, 2013).

At the hearing, Applicant submitted, and the Judge accepted into evidence Applicant Exhibit A. During the hearing, Applicant indicated his desire for the record to be kept open to enable him to submit documents after the hearing. The Judge left the record open for Applicant to submit additional documents. After the hearing, Applicant submitted, and the Judge acknowledged and considered, additional documents, marked Applicant’s Exhibits B through F. However, Applicant also submitted other documents in addition to the ones acknowledged by the Judge, which were not considered. The Judge stated in his decision that Applicant had failed to provide documents pertaining to tax payment plans or bankruptcy records. This information was contained in the additional documents submitted by Applicant. Department Counsel acknowledges that this evidence was received by them but was not forwarded to the Judge.

Given these circumstances, the Board concludes that the best course of action is to remand the case to the Judge for further processing. Other issues raised by Applicant’s appeal brief are not ripe for our consideration.

### **Order**

The decision of the Judge is REMANDED.

Signed: Michael Ra’anan  
Michael Ra’anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: Jeffery D. Billett  
Jeffrey D. Billett  
Administrative Judge

Member, Appeal Board

Signed: James E. Moody \_\_\_\_\_

James E. Moody

Administrative Judge

Member, Appeal Board