

KEYWORD: Guideline F

DIGEST: There is nothing to show what the parties discussed after the close of the hearing. In his Decision, the Judge did not elaborate upon the length of time at issue, nor did he state what else, if anything, the parties had discussed after the hearing. We can not resolve Applicant's due process argument. We cannot say how long the Judge gave Applicant to submit additional evidence. We cannot resolve Applicant's claim that he was told that he did not need to submit his financial plan as executed. Adverse decision remanded

CASENO: 14-03884.a1

DATE: 01/14/2016

DATE: January 14, 2016

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In Re: )  
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----- ) ISCR Case No. 14-03884  
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Applicant for Security Clearance )  
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**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 March 23, 2015, 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 November 15, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Claude R. Heiny 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 he was denied due process and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we remand the case to the Judge.

### **The Judge’s Findings of Fact**

Applicant has raised an issue of due process. In doing so, he asserts matters from outside the record, which we generally are not able to consider. Directive ¶ E3.1.29. However, we will consider new evidence insofar as it bears upon threshold issues of due process or jurisdiction. *See, e.g.*, ISCR Case No. 14-00812 at 2 (App. Bd. Jul. 8, 2015). Applicant words his argument in the following way:

I was told I did not need to submit the plan I have executed. The Judge did not allow me to present the financial plan and evidence of the repayment schedule which I have taken great steps to clear up the debt and that I have executed. Unfortunately, the budget requested did not contain all steps I have taken towards resolving the debts in good faith and paying overdue creditors[.] Appeal Brief at 1.

This issue may have originated in some comments that the Judge made toward the beginning of the hearing. He stated to Applicant the following, *sua sponte*:

[I]t’s going to be at least a month if not two before I can write this up, which means if you get partway back home today and say, Why didn’t I send the Judge a copy of this or add a copy of the receipt that shows that I paid that, you send it to the Government . . . Because sometimes people are making payments, and they made one or two payments, which is a good start, but not enough for me to . . . rule in their favor, but during the intervening time after the hearing, they were able to make additional payments, enough so that they were able to get a clearance, because normally my belief is that if somebody has made one or two payments on a debt, they may or may not continue making their payments . . . If a person has made payments for three months or four months, I believe that they will continue making their payments until the agreement has been paid off. Tr. at 8-9.

He later advised that he would keep the record open “for probably two months” in order to give Applicant a chance to submit additional evidence concerning his debts. Tr. at 15. After Applicant

completed his direct testimony, the Judge stated that “if you’ve got an arrangement with [creditors] and you’re making your payments on the arrangement, the Government’s concern goes away.” Tr. at 30. During closing argument, Applicant’s personal representative requested an opportunity to present evidence of debt resolution. Tr. at 55. The Judge and Department Counsel then engaged in the following colloquy:

[Department Counsel]: Do you want to set a date? You’ve mentioned two months. Do you want to fix that?

[Judge]: Well, basically we’ll go off the record, and we’ll talk about that.

[Department Counsel]: Okay.

[Judge]: Time is now 12:46. We’re off the record. (Whereupon, at 12:46 p. m., the hearing was adjourned). Tr. at 56.

There is nothing in the record to show what the parties discussed after the close of the hearing. In his Decision, the Judge stated that he had given Applicant additional time in which to submit evidence but that Applicant had not done so. Decision at 2. He did not elaborate upon the length of time at issue, nor did he state what else, if anything, the parties had discussed after the hearing.

Under the circumstances, we are not able to resolve Applicant’s due process argument. We cannot say with any degree of certainty how long the Judge gave Applicant to submit additional evidence. More fundamentally, we cannot resolve Applicant’s claim that he was told by the Judge or by some other party that he did not need to submit his financial plan as executed. Department Counsel has not filed a Reply Brief, and in any case we do not have fact-finding authority. *See, e.g.*, ISCR Case No. 14-02394 at 3 (App. Bd. Aug. 17, 2015). Therefore, we conclude that the best resolution to this case is to remand it to the Judge to permit the parties to submit additional documentary evidence, with the proviso that no piece of such evidence will post date September 8, 2015, which was the first business day that was two months after the adjournment of the hearing. After the parties have had an opportunity to submit evidence, the Judge will issue a new Decision. Applicant’s other argument is not ripe for adjudication.

The case is **REMANDED**.

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

Signed: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

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