

KEYWORD: Guideline B; Guideline C; Guideline M

DIGEST: The Board's April 16, 2009 decision remanded the case for the Judge to consider additional evidence. The additional evidence consisted of four pages: two pages from April and two pages from February 2009. The Judge's Remand Decision states that the new evidence is a two page document. The two pages from April are in the evidentiary file. However, the two pages from February are not in the file. Adverse decision remanded.

CASENO: 08-01980,a2

DATE: 06/29/2009

DATE: June 29, 2009

In Re:)	
)	
-----)	ISCR Case No. 08-01980
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James Duffy, Esq., Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On November 14, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence), Guideline C (Foreign Preference) and Guideline M (Use of Information Technology Systems) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 24, 2009, after the hearing, Administrative Judge Erin C. Hogan denied Applicant’s request for a security clearance. Applicant filed an appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30. The Board remanded the case for consideration of additional evidence. On May 6, 2009, Judge Hogan denied Applicant’s request for a security clearance. Applicant filed an appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

As a threshold issue, the Board notes that in its April 16, 2009 decision the Board remanded the case for the Judge to consider additional evidence. The additional evidence that had been presented to the Board consisted of four pages: two pages from April 1, 2009 and two pages from February 2009. The Judge’s Remand Decision states explicitly that the new evidence is a two page document. The two pages from April 1, 2009 are in the evidentiary file. However, the two pages from February are not in the evidentiary file. There is no statement in the Judge’s decision nor any indication in the evidentiary file as to how the two pages were delivered to the Judge. Nor is there any indication that she ever saw or considered the two pages from February 2009. Accordingly, the case is hereby remanded to the Judge for further processing. Nothing about this action shall prejudice the appeal rights of the parties.

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

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

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