

KEYWORD: Guideline F

DIGEST: The Judge held the record open after the hearing to give Applicant an opportunity to submit additional evidence. Applicant provided evidence, but it was not included in the record. Adverse decision remanded.

CASE NO: 11-08849.a1

DATE: 12/02/2013

DATE: December 2, 2013

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| In Re: |) | |
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| ----- |) | ISCR Case No. 11-08849 |
| |) | |
| 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 January 10, 2013, 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 August 27, 2013, 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 the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge considered all the evidence in the case. Consistent with the following, the Board remands the case to the Judge.

Applicant has made representations from outside the record, the gist of which is that he provided documents to Department Counsel post-hearing that were not considered by the Judge. As a general rule, we cannot consider new evidence on appeal. Directive ¶ E3.1.29. However, in the past we have considered new evidence insofar as it raises questions of due process or jurisdiction. *See, e.g.*, ISCR Case No. 12-01038 (App. Bd. Mar. 22, 2013).

In the case before us, the hearing transcript verifies Applicant's assertion that the Judge granted Applicant a period of one week after the close of the hearing (the hearing was held on June 10, 2013) during which Applicant could present further evidence, and that evidence was to be forwarded to Department Counsel and then to the Judge. On appeal, Applicant states that he forwarded some documents to Department Counsel on June 13, 2013 via an overnight delivery service. The documentary evidence portion of the case file contains the exhibits referenced in the Judge's decision. It also contains approximately 70-75 pages of documents that are not referenced in the Judge's decision. These documents are not bound to the file and are loose leaf. The most recent of these documents are dated June 12 and June 13, 2013. The Judge's decision states, "The record was held open to allow Applicant to submit additional information. No additional material was received."¹

In light of the circumstances described above, the Board concludes that the best resolution of this matter 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 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

¹Decision at 2.

Member, Appeal Board