

KEYWORD: Guideline F

DIGEST: Applicant cited to a document at the beginning of the hearing, and Department Counsel advised that she would forward an electronic copy of it to the Judge for inclusion in the record. However, the document is not included among Applicant’s exhibits. The best resolution of this matter is to remand the case to the Judge for further processing. Adverse decision remanded.

CASE NO: 11-12627.a1

DATE: 09/18/2013

DATE: September 18, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-12627
)	
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 March 6, 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 June 27, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA)

Administrative Judge Roger C. Wesley 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 considered all of the evidence 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.

Applicant has presented matters from outside the record, the gist of which is that he provided a document to the Judge that was not incorporated into the record. 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, Applicant has attached to his brief a copy of a character reference submitted by a co-worker. He cited to this document at the beginning of the hearing, and Department Counsel advised that she would forward an electronic copy of it to the Judge for inclusion in the record. Tr. at 22, 27, 92. However, this document is not included among Applicant's exhibits. In the Decision, the Judge stated that Applicant had submitted only one character reference, although the exhibit in question here would have been the second. We conclude 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: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

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

