

KEYWORD: Guideline F

DIGEST: The file may be incomplete and the Judge did not consider evidence Applicant submitted. Adverse decision remanded.

CASENO: 14-03905.a1

DATE: 09/18/2015

DATE: September 18, 2015

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In Re: )  
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----- ) ISCR Case No. 14-03905  
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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 October 7, 2014, 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 decision on the written record. On June 23, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Martin H. Mogul 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.

We note Applicant’s argument that he submitted a Response to the File of Relevant Material (FORM) that the Judge did not take into account in analyzing the case. This argument includes matters from outside the record, which we are generally precluded from considering. Directive ¶ E3.1.29. However, in the past we have considered new evidence insofar as it bears upon questions of due process. *See, e.g.*, ISCR Case No. 14-00812 at 2 (App. Bd. Jul. 8, 2015). In this case, Applicant submitted an email which is in the file but which cited to documents (pertinent to his delinquent tax debts) that are not in the file. In a footnote to the Decision, the Judge stated that he did not consider Applicant’s submission because it was not timely. Although the correspondence was sent and received after the 30-day window for Applicant to have replied to the FORM (Directive ¶ E3.1.7), Department Counsel recommends that we remand the case to the Judge to consider Applicant’s submission, “in the best interest of all parties.” Reply Brief at 5.

Among other things, Applicant asserts that he acted in reliance upon assurances from DOHA personnel in submitting his late response. Given the state of the record we would have to remand in any case. For reasons limited strictly to the circumstances of this case, we remand the case to the Judge to ensure that the record contains all documents which were actually submitted to him and for him to consider the documents that were submitted prior to his June 23, 2015, Decision. The other issue raised by Applicant is not ripe for our consideration.

### **Order**

The Case is **REMANDED**.

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

Signed: William S. Fields  
William S. Fields

Administrative Judge  
Member, Appeal Board

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