

KEYWORD: Guideline F

DIGEST: Applicant has made a prima facie case that some of his evidence was not passed on to the Judge. Adverse decision remanded.

CASENO: 14-04491.a1

DATE: 04/15/2016

DATE: April 15, 2016

_____)	
In Re:)	
)	
-----)	ISCR Case No. 14-04491
)	
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 26, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that

decision–security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 11, 2016, 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 raises the following issues on appeal: whether he submitted documents that did not make it into the record 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 raised an issue of due process. In doing so, he asserts matters from outside the record, which we generally cannot consider. Directive ¶ E3.1.29. However, we will consider new evidence insofar as it bears upon threshold issues such as due process. *See, e.g.*, ISCR Case No. 14-00812 at 2 (App. Bd. Jul. 8, 2015).

The Judge held the record open after the hearing to enable Applicant to submit additional evidence to him through Department Counsel. Tr. at 54. On August 20, 2015, Department Counsel advised Applicant to send “the documents you would like to submit attached to a reply to this email.” The record contains copies of three emails with attachments that were sent to Department Counsel on August 21 and on August 31 by an official acting on behalf of Applicant. Department Counsel forwarded post-hearing documents to the Judge on January 15, 2016. These documents were admitted as Applicant Exhibits B through E. Decision at 2. Applicant asserts that his representative sent other exhibits that were not included in the record. He has attached to his Appeal Brief documents that he contends were the exhibits his representative transmitted to Department Counsel but that were not presented to the Judge. They purport to show resolution of most of the SOR debts. Department Counsel has not submitted a Reply Brief addressing this issue. We conclude that Applicant has made a *prima facie* showing that some of his evidence was not passed on to the Judge and, therefore, was not considered. We conclude that the best resolution is to remand the case to the Judge to consider the documents that Applicant has attached to his brief and then to issue a new Decision in accordance with the Directive. The other issue raised by Applicant is not ripe for 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
Member, Appeal Board