

KEYWORD: Guideline F; Guideline E

DIGEST: We conclude that Applicant's assertions are sufficient to raise a prima facie case that he submitted documents in response to the FORM that did not arrive at DOHA or were not sent to the Judge. We cannot resolve this issue based upon the facts before us. We conclude that the best resolution is to remand the case to the Judge for further processing consistent with the Directive. Adverse decision remanded.

CASENO: 14-06467.a1

DATE: 02/24/2016

DATE: February 24, 2016

In Re:)	
)	
-----)	ISCR Case No. 14-06467
)	
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. In February 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 decision on the written record. On December 24, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge James F. Duffy 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 Applicant submitted documentary evidence that was not included in the record and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we remand the case to the Judge.

Applicant asserts that he previously submitted documents in response to the File of Relevant Material (FORM). We note that these documents—a letter from Applicant discussing his financial circumstances and a letter from an attorney addressing a proposed bankruptcy action—are not found in the record. Applicant’s assertions on appeal constitute new evidence, which we are generally prohibited from considering. 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). Under the facts of this case, we conclude that Applicant’s assertions are sufficient to raise a prima facie case that he submitted documents in response to the FORM that either did not arrive at DOHA or were not sent to the Judge. We cannot resolve this issue based upon the facts before us. Accordingly, we conclude that the best resolution of this case is to remand it to the Judge for further processing consistent with the Directive. *See* ISCR Case No. 12-07667 at 2-3 (App. Bd. Mar. 11, 2013).

Order

The Decision is **REMANDED**.

Signed: Michael Ra’anan
Michael 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