KEYWORD: Guideline F

DIGEST: In her appeal brief, Applicant asserted she submitted documents to Department Counsel on August 8, 2016, and provided a copy of the email that she sent to Department Counsel along with its five purported attachments. Adverse decision remanded.

CASENO: 15-02816.a1

DATE: 07/24/2017

DATE: July 24, 2017

In Re:

ISCR Case No. 15-02816

Applicant for Security Clearance

APPEAL BOARD DECISION

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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 31, 2015, 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 May 27, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert Robinson Gales 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. Consistent with the following, we remand the case to the Judge.

At the hearing, the Judge left the record open until August 8, 2016, for Applicant to submit documents. Tr. at 56 and 64. In the decision, the Judge noted that Applicant did not submit any documents. In her appeal brief, Applicant asserted she submitted documents to Department Counsel on August 8, 2016, and provided a copy of the email that she sent to Department Counsel along with its five purported attachments.

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 she submitted documents to Department Counsel 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, e.g.*, 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: James E. Moody James E. Moody Administrative Judge Member, Appeal Board

Signed: James F. Duffy James F. Duffy Administrative Judge Member, Appeal Board