

KEYWORD: Guideline G; Guideline J

DIGEST: Under the facts of this case we conclude that the best resolution is to remand the case to the Judge to consider the documents that Applicant has attached to his appeal brief. Adverse decision remanded.

CASENO: 15-06018.a1

DATE: 08/09/2017

DATE: August 9, 2017

In Re:)	
)	
-----)	ISCR Case No. 15-06018
)	
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 19, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On May 17, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant has raised an issue of due process. He notes a statement in the Decision that he had not responded to the File of Relevant Material (FORM). He argues that he had provided a response within the time specified but that it did not make it into the record. In presenting his arguments, Applicant asserts matters from outside the record, which we generally cannot consider. Directive ¶ E3.1.29. However, in the past we have considered 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).

Applicant has submitted documents that he represents to be the ones he provided. One of the documents is a letter that, among other things, draws attention to an error in the FORM.¹ Others address the legal consequences of Applicant's security-significance conduct. Under the facts of this case we conclude that the best resolution is to remand the case to the Judge to consider the documents that Applicant has attached to his appeal brief. Other issues that Applicant has raised in his brief are not ripe for consideration at this time.

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

¹Applicant notes that the introductory paragraph of the FORM cites a name other than Applicant's as the subject of this adjudication. Applicant speculates that his own response might have been placed in another person's file by mistake.