

KEYWORD: Guideline F

DIGEST: We conclude that Applicant made a good-faith effort to request additional time and that he had documents that he believed would assist in demonstrating mitigation. We conclude that the best resolution of this appeal is to remand the case to the Judge for him to consider the documents. Adverse decision remanded.

CASENO: 15-08847.a1

DATE: 09/08/2017

DATE: September 8, 2017

_____)	
In Re:)	
)	
-----)	ISCR Case No. 15-08847
)	
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 June 17, 2016, 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 June 6, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Richard A. Cefola denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

As a preliminary matter, Applicant claims that he submitted documentary evidence to the Judge that did not make it into the record. Although his assertions constitute new evidence, which we are generally not permitted to consider, we will consider such evidence on threshold issues such as due process. *See, e.g.*, ISCR Case No.14-00812 at 2 (App. Bd. Jul. 8, 2015).

The transcript shows that the Judge left the record open for a month after the hearing to enable Applicant to submit additional evidence. The Judge advised Applicant that he could ask for additional time if needed. Tr. at 41. However, the Judge stated in the Decision that Applicant submitted nothing. Attached to Applicant's appeal brief is email traffic between himself and the DoD Consolidated Adjudications Facility (CAF) in which he requests an extension of time to submit documents. Although he should have sent this request to the Judge, Applicant may well have misunderstood the relationship between the DoD CAF and DOHA. Under the circumstances, we conclude that Applicant made a good-faith effort to request additional time and that he had documents that he believed would assist in demonstrating mitigation. We conclude that the best resolution of this appeal is to remand the case to the Judge for him to consider the documents Applicant has attached to his brief and issue a new Decision in accordance with the Directive. Other issues raised by Applicant's brief are not ripe for adjudication at this time.

Order

The Decision is **REMANDED**.

Signed: Michael Y. Ra'anan
Michael Y. 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