

KEYWORD: Guideline F

DIGEST: 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. Adverse decision remanded.

CASENO: 16-00599.a1

DATE: 03/07/2018

DATE: March 07, 2018

In Re:)	
)	
-----)	ISCR Case No. 16-00599
)	
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 September 15, 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 decision on the written record. On November 28, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Braden M. Murphy 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).

In February 2017, Applicant submitted a response to Department Counsel’s File of Relevant Material (FORM). On November 6, 2017, due to the period that elapsed since Applicant submitted his FORM response, the Judge sent an email to the parties reopening the record until November 20, 2017, to permit Applicant the opportunity to submit additional matters. On November 7, 2017, Applicant responded by indicating that he intended to submit a couple of items. In the Decision, the Judge noted that Applicant neither responded further nor submitted additional information.

In his Appeal Brief, Applicant provided a copy of an email that he purportedly sent to the Judge and Department Counsel on November 20, 2017. This email contained a narrative statement and an attached file. Applicant also provided copies of the documents that were supposedly contained in the attached file.¹ In a reply brief, Department Counsel indicated that he does not oppose a remand. Given these circumstances, we conclude the best resolution of this appeal is to remand the case to the Judge for him to consider the documents attached to Applicant’s brief and issue a new Decision in accordance with the Directive.

¹ None of these documents post-date November 20, 2017.

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