

KEYWORD: Guideline F

DIGEST: Applicant contends that he did submit a response to the Judge’s October 18 email. He has attached to his brief a copy of an email from himself dated October 30, 2017, addressed to the Judge and to Department Counsel. We conclude that the best resolution of this case is to remand it to the Judge to reopen the record and permit Applicant to submit to him a copy of the attachment actually contained in his email response. Adverse decision remanded.

CASENO: 16-02850.a1

DATE: 03/14/2018

DATE: March 14, 2018

In Re:	)	
	)	
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	)	
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 October 20, 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.

Applicant contends that he submitted information to the Judge that did not make it into the record. Consistent with the following, we remand the case to the Judge.

Applicant contends that he submitted evidence to the Judge about the status of his mortgage account, which was the largest of the three debts alleged in the SOR. In presenting his appeal he includes documents and information from outside the record. Although we generally do not consider new evidence on appeal, we will do so on threshold issues such as jurisdiction or due process. *See, e.g.*, ISCR Case No. 16-01129 at 2 (App. Bd. Aug. 7, 2017).

The Judge reopened the record due to the time that had elapsed between Applicant’s response to the FORM and the assignment of the case to him. Applicant submitted some information, which the Judge admitted. On October 18, 2017, the Judge stated by email to Applicant that he would hold the record open until October 30, 2017, for Applicant to submit “[d]ocuments establishing that your mortgage is current . . . as well as any documents regarding the current status of the other 2 debts in the SOR.” Hearing Exhibit III. The Judge found that Applicant did not provide any further documentation. Decision at 2.

Applicant contends that he did submit a response to the Judge’s October 18 email. He has attached to his brief a copy of an email from himself dated October 30, 2017, addressed to the Judge and to Department Counsel. This email states, *inter alia*, that Applicant was providing a copy of his “most recent mortgage statement.” On the page following this email, Applicant has attached a document from his mortgage lender. This document references payments made on a mortgage account that appears to be the one alleged in the SOR, insofar as the account number has the same last four digits as the mortgage debt disclosed in Applicant’s credit report, although four of these payments post-date Applicant’s October 30 email, of which two of them post-date the Judge’s Decision. Three of the payments reflected in the document are dated prior to the October 30 deadline. As it stands, Applicant has made a *prima facie* showing that he sent an email to the Judge on October 30, 2017, that included an attachment about his mortgage account. This was within the time frame that the Judge had established for the submission of additional documentation. Although this attachment obviously could not have included information beyond the date the email was sent, it may well have included information about the status of Applicant’s mortgage account as of October 30. We conclude that the best resolution of this case is to remand it to the Judge to reopen the record and permit Applicant to submit to him a copy of the attachment actually contained in his email response. Other issues raised by Applicant are not ripe for adjudication 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: Charles C. Hale  
Charles C. Hale  
Administrative Judge  
Member, Appeal Board