

KEYWORD: Guideline F

DIGEST: Applicant's appeal brief raises the possibility that he submitted a document that never reached the Judge. An equitable resolution of this case would be for Applicant to present the document to the Judge. Adverse decision remanded.

CASENO: 08-11322.a1

DATE: 05/07/2010

DATE: May 7, 2010

_____)	
In Re:)	
)	
-----)	ISCR Case No. 08-11322
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On June 19, 2009, DOHA 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 February 18, 2010, after the hearing, Administrative Judge Paul J. Mason denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

At the close of the hearing, the Judge held the record open for two weeks so that Applicant might submit documentation in support of his case for mitigation. Tr. at 46. However, when the Judge issued his decision, he stated that Applicant neglected to submit anything. Decision at 2. On April 5, 2010, Applicant filed an appeal brief containing new evidence that raised the possibility that Applicant submitted a document which never reached the Judge.¹ We conclude that an equitable resolution of this case would be for Applicant to present the document to the Judge.² Accordingly, the case is remanded to the Judge for further processing. Nothing about this action shall prejudice the appeal rights of the parties.

Signed: Michael Y. Ra’anan

Michael Y. Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

¹Department Counsel did not file a reply brief.

²Applicant also submitted new evidence which, on its face, post-dates the Judge’s decision. Such new evidence is not admissible on remand.