

KEYWORD: Guideline B; Guideline F

DIGEST: Without a complete record the Board cannot perform appellate review. Adverse decision remanded.

CASENO: 09-02220.a1

DATE: 08/12/2010

DATE: August 12, 2010

In Re:)	
)	
-----)	ISCR Case No. 09-02220
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On November 5, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and

Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 11, 2010, after the hearing, Administrative Judge Matthew E. Malone denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's adverse security clearance decision was arbitrary, capricious, and contrary to law. Consistent with the following discussion, we remand the case.

As a preliminary issue, we note that the record does not contain Government Exhibits 1-7, the documents submitted by Department Counsel and admitted at the hearing. Tr. at pp. 19-23. Additionally, the record does not contain Applicant's Exhibits I through N, which were submitted by Applicant and admitted at the hearing. Tr. at pp. 27-31. Without a complete record we cannot perform appellate review. Accordingly, we remand the case to the Judge for the purpose of reconstructing the record in consultation with the parties. Upon completion of that task, the case file should be returned to the Board for processing of Applicant's appeal in accordance with the Directive.

Order

The Judge's adverse security clearance decision is REMANDED.

Signed: Michael Y. Ra'anan

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

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board