

KEYWORD: Guideline F

DIGEST: Applicant asserts, with documentary support, that he took all steps to ensure that the documents attached to his appeal brief were timely submitted to the Judge, but the documents did not make it into the record. We remand the case to the Judge to consider the documents and to issue a new decision. Adverse decision remanded.

CASENO: 10-09936.a1

DATE: 02/03/2012

DATE: February 3, 2012

In Re:)
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 -----) ISCR Case No. 10-09936
)
)
 Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Gina L. Marine, Esq., Department Counsel

FOR APPLICANT

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 3, 2011, 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 December 14, 2011, after the hearing, Administrative Judge Robert E. Coacher denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether Applicant was denied an opportunity to present evidence in mitigation and extenuation. Consistent with the following, we remand the case to the Judge.

The hearing in Applicant’s case took place on October 24, 2011. The Judge held the record open for 30 days in order to give Applicant an opportunity to present additional evidence. Applicant’s brief includes information and documents outside the record regarding his efforts to provide additional evidence. We cannot consider new evidence regarding SOR allegations, but we have, in appropriate cases, considered evidence outside the record insofar as it raises threshold issues of due process or jurisdiction. *See, e.g.*, ISCR Case No. 08-07664 at 2 (App. Bd. Dec. 29, 2009). In this case, we have considered the representations in Applicant’s brief for the light they shed on the issue raised on appeal. Applicant asserts, and Department Counsel concurs, that he took all steps necessary to ensure that the documents attached to his appeal brief were submitted to the Judge within the allotted time, but, through no fault of his own, the documents did not make it into the record. Applicant’s assertions are not frivolous, nor are they contradicted by anything in the record. Accordingly, we conclude that the best resolution of this appeal is to remand the case to the Judge for him to consider the documents that Applicant had attempted to submit and then to issue a new decision 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: Jean E. Smallin
Jean E. Smallin
Administrative Judge

Member, Appeal Board

Signed: James E. Moody _____

James E. Moody
Administrative Judge
Member, Appeal Board