

KEYWORD: Guideline F

DIGEST: Applicant failed to present evidence sufficient to raise a reasonable belief that she had submitted a response to the File of Relevant Material. Even if she had submitted the documents in question, they would not likely have affected the outcome of the case. Otherwise, she did not raise an issue of harmful error. Adverse decision affirmed.

CASE NO: 11-07169.a1

DATE: 11/18/2013

DATE: November 18, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-07169
)	
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 December 3, 2012, 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 August 29, 2013, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Philip S. Howe denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant’s brief asserts matters not contained in the record. We are not authorized to consider new evidence on appeal. Directive ¶ E3.1.29. However, in appropriate cases we have

considered matters outside the record insofar as they bear upon threshold issues such as due process. *See, e.g.*, ISCR Case No. 12-07667 at 2 (App. Bd. Mar. 11, 2013). We have remanded cases to Judges in order for them to consider evidence that, through no fault of the applicants, did not make it into the record. *See, e.g.*, ISCR Case No. 12-01038 at 2 (App. Bd. Mar. 22, 2013). In the case before us, Applicant states that she submitted a response to the File of Relevant Material (FORM), but the documents were not included in the record. She has attached the documents she claims to have submitted, speculating that they “may have been misplaced.” Appeal Brief at 1. In a Reply Brief, the Chief Department Counsel argues that Applicant has not made a proffer sufficient to support a reasonable inference that she actually submitted a response to the FORM. We note that Applicant has submitted under separate cover an e-mail communication between two officials of the Government agency where she performs her duties and that could be interpreted to mean that Applicant had made a response. However, it is ambiguous and is not accompanied by an explanation from Applicant herself. *Compare* with ISCR Case No. 06-07320 at 2 (App. Bd. Jul. 25, 2007), in which the record contained affirmative evidence permitting a reasonable inference that the applicant submitted a reply to the FORM. In fact, Applicant’s contention is substantially undermined by the fact that several of the documents she claims to have submitted actually post-date the Judge’s decision. Moreover, we find persuasive the Chief Department Counsel’s argument that even if the documents in question had been submitted to the Judge it is unlikely that there would have been a different outcome. *See, e.g.*, ISCR Case No. 05-04482 at 2 (App. Bd. May 21, 2007).

Otherwise, Applicant does not raise an issue of harmful error by the Judge. We do not review a case *de novo*. Our authority to review a case is limited to those in which the appealing party has alleged the Judge committed harmful error. *See* Directive ¶ E3.1.32. *See also* ISCR Case No. 10-06703 at 2 (App. Bd. May 4, 2012). Therefore, the Decision of the Judge is **AFFIRMED**.

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