

KEYWORD: Guideline F

DIGEST: A Judge is required to prepare a full and complete record which is provided to the Board on appeal. See Directive ¶¶ E3.1.19 and E3.1.29. Failure to preserve a complete record is error and can impair our ability to perform our review function. See, e.g., ISCR Case No. 03-08257 at 5 (App. Bd. Feb. 8, 2007); see also ISCR Case No. 02-18668 at 4 (App. Bd. Feb. 10, 2004) and ISCR Case No. 12-04540 at 4, n. 3 (App. Bd. Mar. 19, 2014). Although the Judge summarized what he viewed as the pertinent aspects of Applicant’s exhibits, we have no way of knowing with certitude what else these documents may have contained that might have a bearing on the case. We conclude, therefore, that the Judge has failed to maintain a complete record, insofar as he admitted the content of documents without preserving the documents themselves for our review. Adverse decision remanded.

CASENO: 17-03043.al

DATE: 03/12/2019

DATE: March 12, 2019

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 January 16, 2018, 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 hearing. On November 27, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey 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 the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we remand the case.

The essence of this case concerns Applicant's delinquent debts and her failure to have filed her Federal income tax returns for 2013 to 2015. Applicant's problems were affected by some difficult family circumstances, but the Judge concluded that she had not demonstrated responsible action in regard to her tax filing delinquencies and to three of her SOR debts.

At the beginning of the hearing, the Judge noted that Applicant's exhibits were original documents. He proposed, without objection from either party, to read the contents of the exhibits into the record and return them to Applicant:

[Judge]: I have a letter from [creditor] dated February 8, 2018 and the last four of the account is [account number]. The balance is \$1,141.72. And it says in the middle of the letter, "Dear [Applicant], Thank you for your recent payment of \$315.79. We credited this to your . . . account referenced above. If you have any questions, please call. . . . We have a copy of a lease dated November 15, 2009, and it's for an apartment located in [name, address of apartment]. And looks like the rent per month is \$1,985. Does that sound right?

[Applicant]: Yes, sir.

[Judge]: Okay and the lease was supposed to end on 17 December 2010 according to the lease contract. And so I guess what I have here is a lease for a different property starting December 3, 2010, and expiring on December 4, 2011. Is that right?

[Applicant]: Yes, sir.

[Judge]: Okay. And the debt originating from [vehicle dealership] . . . was assigned to [creditor] and it's now paid in full as of March 21, 2018. The letter is dated April 3, 2018. And she's also provided a copy of the contract to finance the [vehicle] . . . So let me give you all of this documentation back. Thank you, ma'am. Tr. at 19-21

In the Decision, the Judge stated that he had admitted “the content of Applicant’s exhibits” into evidence and that he had admitted all proffered exhibits. Decision at 2. Nowhere in the transcript does it show that he admitted Applicant’s exhibits themselves, nor has he otherwise included them in the record. There are two documents contained in Applicant’s Answer to the SOR that may correspond to the description of the leases cited above, although the Judge does not state that this is the case. None of the other documents that Applicant brought to the hearing are to be found in the record.¹

A Judge is required to prepare a full and complete record which is provided to the Board on appeal. *See Directive ¶¶ E3.1.19 and E3.1.29.* Failure to preserve a complete record is error and can impair our ability to perform our review function. *See, e.g., ISCR Case No. 03-08257 at 5 (App. Bd. Feb. 8, 2007); see also ISCR Case No. 02-18668 at 4 (App. Bd. Feb. 10, 2004) and ISCR Case No. 12-04540 at 4, n. 3 (App. Bd. Mar. 19, 2014).* Although the Judge summarized what he viewed as the pertinent aspects of Applicant’s exhibits, we have no way of knowing with certitude what else these documents may have contained that might have a bearing on the case. We conclude, therefore, that the Judge has failed to maintain a complete record, insofar as he admitted the content of documents without preserving the documents themselves for our review. We see no meaningful difference between a document and its content, and to admit the content of a document without admitting the entirety of what that documents contains is something of a contradiction. Without being able to examine the documents that Applicant showed to the Judge, we cannot give appropriate consideration to the issues she has raised on appeal. We conclude that the best approach is to remand the case to the Judge to identify the documents that Applicant desired him to consider and include these documents in the record. The other issues that Applicant has raised are not ripe for consideration.

¹Applicant attached the documents regarding the vehicle to her Appeal Brief. It is new evidence and is not part of the record.

Order

The case 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: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board