

KEYWORD: Guideline B; Guideline E

DIGEST: Applicant challenges, for example, the following finding, “Applicant utilized several of his accounts at multiple U.S. banks for these transactions.” He contends he used only the bank that held his Company H’s account for those transactions. We do not find this challenge persuasive. In his testimony, he stated that he was using various branches from two banks to conduct these transactions. Tr. At 159 and 170. See also GE at 9. Having reviewed each of Applicant’s challenges, the Board concludes that the Judge’s material findings and conclusions regarding the bank transactions at issue are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Adverse decision affirmed.

CASE NO: 19-03558.a1

DATE: 05/17/2021

DATE: May 17, 2021

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In Re:)	
-----)	ISCR Case No. 19-03558
)	
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 March 13, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Department Counsel requested a hearing. On February 16, 2021, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Braden M. Murphy denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in finding against him on a Guideline E allegation. The Judge found in favor of Applicant on one Guideline E allegation that was not raised as an issue on appeal. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Born in Nigeria, Applicant came to the U.S. in the early 2000s on a student visa. He earned a master’s degree a few years later. About six years ago, he became a U.S. citizen. He has worked for a defense contractor for about the past 15 years. Applicant is married and has three children who are native-born U.S. citizens

Applicant admitted the Guideline B allegations that assert his parents and a cousin are citizens and residents of Nigeria and his wife is a citizen of Nigeria. His wife’s U.S. resident status is scheduled to expire in a few years. Applicant admitted the Guideline E allegation that asserts he allowed his wife’s distant relative to make multiple deposits in his U.S. bank account and later, at that relative’s direction, transferred the funds to unknown persons.

In 2017, the FBI interviewed Applicant advising him the alleged financial transactions suggested possible money laundering or a scam. Neither Applicant nor his wife were charged or arrested.

In 2016, Applicant’s wife received a phone call from a distant relative (Mr. E) who was calling from Nigeria. Mr. E stated he was a foreign-exchange broker and wanted to use Applicant’s bank accounts in the United States to transfer money between unknown individuals and one of Mr. E’s clients, a travel agency in South Africa. Applicant had never met Mr. E but agreed to help him. Between October and December 2016, numerous bank transactions occurred, mostly through a bank account that Applicant and his wife maintained for an unsuccessful business venture (Company H) that remained in existence.

Applicant testified that he would wire funds for Mr. E to various foreign bank accounts, in South Africa, China, and Turkey, as well as Nigeria. (Tr. 129-130, 160, 175-176, 184, 243-244; GE 2 [Applicant’ background interview] at 9) Applicant did not know any of the people he transacted with. (Tr. 130) The deposits often involved large sums of money, almost always well over \$10,000 and at times over

\$100,000. (Tr. 130-131, 156-158, 173, 202) Applicant would then wire the deposited funds to Mr. E's client, the travel company, or to other foreign accounts. (GE 4 [transcripts of text messages] at 2) Most of the funds were in U.S. dollars but some of the funds were in "naira," a Nigerian currency. (Tr. 143-146) [Decision at 5.]

In November 2016, Applicant informed Mr. E that Company H was not licensed to deal in currency and the wiring of large amounts of money into that company's account would eventually be flagged. About a week later, the bank closed the account and refunded him the balance by check.

Applicant testified at the time he began the transactions with Mr. E, he "thought nothing of it" because it seemed like something legitimate." (50-51) He said he "just thought I was doing my wife a favor. And then it turned into a nightmare." (Tr. 75) Applicant also testified that while he was engaged in the transactions with Mr. E, he became concerned about them. He testified that he "didn't want to have anything to do with any kind of fraud. I told him this on numerous occasions." He said the only reason he did it was because his wife recommended it. (Tr. 241, 242). [Decision at 5.]

Applicant is close to his cousin Mr. O in Nigeria. In 2019, Applicant made several deposits totaling about \$72,000 in U.S. bank accounts for his cousin Mr. O. From that money, Applicant purchased a luxury vehicle and shipped it to his cousin in Nigeria.

Nigeria is challenged by terrorist activity, sectarian violence, and human-rights abuses. Organizations such as Boko Haram and ISIS operate in Nigeria, attack state and civilian targets, and seek to replace the Nigerian Government. A large segment of the population lives in extreme poverty. Financial scams, which are often initiated through the internet, are prevalent in Nigeria. Some of these scams involve money transfers.

The Judge's Analysis

Applicant's Nigerian family members create a heightened risk of foreign pressure or coercion and could become a basis for him to be placed in a conflict of interest. He failed to mitigate the foreign influence security concerns.

Applicant's bank account was frozen due to suspicious transactions that he made for Mr. E. These transactions reflect a pattern of poor judgment that is difficult to mitigate.

Discussion

In his appeal brief, Applicant does not challenge the Judge's adverse findings and conclusions regarding the Guideline B allegations. Instead, he challenges some of the Judge's adverse findings regarding the Guideline E allegation. When a Judge's findings are challenged, we examine them to see if they are supported by substantial evidence, *i.e.*, "such relevant evidence as

a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive ¶ E3.1.32.1. *See also* ISCR Case No. 16-04094 at 2 (App. Bd. Apr. 20, 2018).

Applicant challenges, for example, the following finding, “Applicant utilized several of his accounts at multiple U.S. banks for these transactions.” He contends he used only the bank that held his Company H’s account for those transactions. We do not find this challenge persuasive. In his testimony, he stated that he was using various branches from two banks to conduct these transactions. Tr. at 159 and 170. *See also* GE at 9. Having reviewed each of Applicant’s challenges, the Board concludes that the Judge’s material findings and conclusions regarding the bank transactions at issue are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. *See, e.g.* ISCR Case No. 18-02581 at 3 (App. Bd. Jan. 14, 2020). Applicant has not identified any harmful error likely to change the outcome of the case.

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge’s adverse decision is sustainable on this record. “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Order

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra'anan
Michael Y. 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