

KEYWORD: Guideline B; Guideline C; Guideline F; Guideline E

DIGEST: Applicant is a citizen and resident of Canada. Applicant participates in or has already benefitted from the following Canadian government programs: subsidized college education, health insurance, pension plan, and social insurance. He has traveled on a Canadian passport, and has a Canadian driver's licence. Applicant's parents, siblings children and domestic partner are also citizens and residents of Canada. Adverse decision affirmed.

CASENO: 12-04023.a1

DATE: 04/24/2015

DATE: April 24, 2015

In Re:	)	
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	)	
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 February 28, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence), Guideline C (Foreign Preference), Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On January 6, 2015, 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 issues on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guidelines F and E are not at issue in this appeal. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact**

The Judge made the following findings pertinent to the issues raised on appeal: Applicant is seeking a security clearance in connection with his employment with a DoD contractor. He is a dual citizen of the U.S. and Canada, and he has extensive family connections within that country. Applicant’s parents, siblings, and child are citizens and residents of Canada, as is his domestic partner. Applicant has connections with other Canadian citizens, including the family of his partner and other members of his own family.

Applicant has a Canadian bank account with about \$5,000 in it. He has held a Canadian passport in the past and used it for international travel. Although he previously stated that he would probably renew this passport, he testified at the hearing that he saw no need to do so. Applicant attended college in Canada, costs of which were subsidized by the Canadian government. Applicant’s health insurance is provided by a Canadian province; he participates in a Canadian pension plan and social insurance plan; he pays Canadian taxes, votes in Canadian elections, and has a Canadian driver’s license. He and his partner plan to live in Canada at least another five years.

Applicant enjoys an excellent reputation for professionalism, discretion, reliability, honesty, trustworthiness, etc. His numerous character witnesses support his efforts to obtain a clearance.

The Judge took official notice of facts regarding the relationship between Canada and the U.S. Among his extensive findings are the following: Canada is a democracy that shares a common border with the U.S. Canada complies with the rule of law and protects civil liberties. It is a member of NATO and is a signatory with the U.S. in several international agreements, including the North American Free Trade Agreement. Canada and the U.S. share the world’s most comprehensive trading relationship, and Canada is the U.S.’s largest foreign investor. The two countries cooperate in many ways, including efforts to combat terrorism.

### **The Judge’s Analysis**

The Judge cited to his findings about the close relationship between the U.S. and Canada. He noted, however, that Guideline B concerns are not limited to countries hostile to the U.S. He also stated that terrorist groups can often conduct intelligence activities as efficiently as governments can. He stated that Applicant's close ties with numerous family members create a potential conflict of interest between Applicant's duty to protect classified information and his sense of obligation to the connections within Canada. He concluded that Applicant's connections within the U.S. "are insufficient to outweigh his connections to Canada." Decision at 14. He also concluded that Applicant had "shown a very strong preference for Canada." *Id.* at 15.

In the whole person analysis, the Judge concluded that the reasons for denying Applicant a clearance outweighed those for granting one. He stated that "it cannot be ruled out that at some future time Canadian entities may seek classified or sensitive information from Applicant." *Id.* at 19. He noted Applicant's character witnesses, who described him as trustworthy, reliable, honest, etc. However, he also noted evidence of Applicant's preference for Canada in many important ways, including payment of Canadian taxes and plans to remain in Canada for several years.

### **Discussion**

Applicant argues that he is not susceptible to foreign influence or preference. Among other things, he cites to his testimony that he had moved to Canada because his ex-wife was not willing to live in the U.S. We construe this as an argument that his case does not raise security concerns under Guidelines B and C. The Directive presumes a nexus between admitted or proven conduct under any of the Guidelines and an applicant's worthiness for a clearance. *See, e.g.*, ISCR Case No. 12-10404 at 5 (App. Bd. Mar. 13, 2015). Applicant's extensive contacts within Canada, along with his dual citizenship and exercise of various prerogatives of Canadian citizenship, support the Judge's conclusion that his circumstances raise Foreign Influence and Foreign Preference concerns.

Applicant cites to his favorable evidence, such as his good character and his service to the Defense industry. The Judge made findings about Applicant's good character and professional qualities, discussing this evidence in his analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-09118 at 2 (App. Bd. Mar. 25, 2015).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. Guideline B recognizes that foreign contacts can raise a concern that the individual may be "induced to help a foreign person, group, organization, or government in a way that is not in the U.S. interests." Directive, Enclosure 2 ¶ 6. Guideline C states that an individual who "acts in such a way as to indicate a preference for a foreign country . . . may be prone to provide information or make decisions that are harmful to the interests of the [U.S.]" Neither of the Guidelines are limited to countries that are hostile to the U.S. *See, e.g.*, ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005); ADP Case 07-14939 at 4 (App. Bd. Mar. 11, 2009). Nor are they limited to concerns about acts undertaken by the foreign government itself. *See, e.g.*, ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007). The 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, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

**Order**

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan  
Michael 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