

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

DIGEST: Applicant contends that the Judge erred by not addressing his objections to certain administrative notice documents submitted by Department Counsel. However, the documents in question were submitted for the Judge’s consideration of the security concerns raised under Guideline B, which the Judge resolved in Applicant’s favor. Adverse decision affirmed.

CASENO: 14-06521.a1

DATE: 05/04/2017

DATE: May 4, 2017

In Re:	)	
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Applicant for Security Clearance	)	
	)	ISCR Case No. 14-06521

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Jeffrey D. Billett, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 26, 2015, 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 decision on the written record. On January 26, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam 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 admitting certain Administrative Notice documents and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guidelines B and E are not at issue in this appeal.<sup>1</sup> 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 an Israeli citizen by birth and holds a current Israeli passport that he uses for travel to Israel. He travels to that country once or twice a year to visit family and friends. His facility security officer (FSO) maintains the passport until Applicant retrieves it for travel. Applicant is willing to renounce his Israeli citizenship but has not done so because of the inconvenience and expense involved in traveling to an Israeli embassy or consulate.

Applicant did not file timely returns or pay taxes owed to the IRS and to his state from 2001 until 2009. His unpaid taxes totaled over \$87,000. The IRS and his state filed liens against him. He resolved his tax delinquencies in 2012. Although it was not alleged in the SOR, Applicant was also the subject of Federal tax liens for 1999 and 2000. These tax debts have been paid.

Applicant has properly filed his tax returns since 2010. He sought treatment for a gambling addiction in 2005 and no longer has a problem.

### **The Judge's Analysis**

The Judge cited to evidence that Applicant has maintained an Israeli passport since becoming a U.S. citizen and has used it regularly for travel to Israel. She noted his willingness to renounce his Israeli citizenship but stated that he had taken no steps to accomplish that. Regarding Guideline F, the Judge noted that Applicant had marital issues that may have affected his tax problem. However, she found no evidence that Applicant had acted responsibly in regard to his tax delinquencies. She also noted that Applicant's impetus to resolve his Federal and state tax delinquencies were the liens that had been filed against him rather than his own good-faith effort to address his problems.

### **Discussion**

Applicant contends that the Judge erred by not addressing his objections to certain administrative notice documents submitted by Department Counsel. He contends that these documents were inadmissible because they were not relevant. However, the documents in question were submitted for the Judge's consideration of the security concerns raised under Guideline B, which the Judge resolved in Applicant's favor. *See* Hearing Exhibits 1, Request for Administrative Notice, and 1(a), a brief by Department Counsel in support of her request, both of which state that the documents are part of the Government's case under Guideline B. The Judge's analysis under

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<sup>1</sup>While the case was pending appeal Department Counsel withdrew the sole allegation under Guideline C. Department Counsel's action rendered moot a motion by Applicant.

that Guideline discussed the facts that she had administratively noticed, while her analysis under Guideline C made no reference to them. There is no basis in the record or in the Decision to conclude that the challenged documents exerted a meaningful effect on the Judge's evaluation of the Guideline C concerns. Therefore, even if the Judge erred by administratively noticing one or more of these documents, it was harmless in that it did not affect the outcome of the case. *See, e.g.*, ISCR Case No. 15-00535 at 3 (App. Bd. Mar. 13, 2017). Furthermore, Department Counsel withdrew the allegation under Guideline C after the Judge issued the decision

The balance of Applicant's appeal argument constitutes a disagreement with the Judge's weighing of the evidence. However, his argument is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Neither has Applicant rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 13-00502 at 3 (App. Bd. Mar. 7, 2017).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, both as to the mitigating conditions and the whole-person factors. 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: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board