

KEYWORD: Guideline B; Guideline C

DIGEST: Applicant’s appeal brief includes email in which the Judge stated that he intended to issue a summary decision granting Applicant a security clearance. Under these circumstances, the best remedy is to remand the case to the Judge for correction or explanation of the discrepancy noted above. Adverse decision remanded.

CASENO: 15-03176.a1

DATE: 05/26/2017

DATE: May 26, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-03176
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APPEAL BOARD SUMMARY REMAND

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 2, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Preference) and Guideline C (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 16, 2017, after the hearing, Defense Office of Hearings and Appeals Administrative Judge Robert J. Tuider denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant's appeal brief takes issue with the Judge's ultimate adverse decision and includes a copy of a post-hearing email exchange between the Judge and Department Counsel which is part of the record of the case. In this email exchange the Judge stated that he intended to issue a summary decision granting Applicant a security clearance. In her reply email to the Judge, Department Counsel stated without elaboration that the government objected to the issuance of a summary decision in this case.¹ After receiving Department Counsel's reply, the Judge issued a full decision denying Applicant a security clearance. A review of the record indicates that the Judge did not receive any additional evidence or argument from the parties subsequent to Department Counsel's reply email that would readily explain such an apparent significant change in position. The Judge's decision contains no discussion of the email exchange regarding the proposed favorable decision and summary disposition. Accordingly, given the current state of the record, the Judge's handling of the case appears to be either erroneous, or arbitrary and capricious, based upon the representations contained in the aforesaid email exchange.² Under these circumstances, the best remedy is to remand the case to the Judge for correction or explanation of the discrepancy noted above.

The case is **Remanded**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

¹Department Counsel did not specifically object to the fact that the Judge's decision would be favorable. She only stated: "The Government objects to the issuance of a summary decision in this case." Any decision as to appeal by either of the parties would have been made subsequent to the issuance of the final decision.

²Generally, we would anticipate that a Judge would inform the parties that he or she intended to issue a favorable summary decision only after he or she had fully considered all aspects of the case and concluded that the undisputed record evidence justified a favorable decision with no potential appellate review.

