

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

DIGEST: We will consider new evidence insofar as it bears upon the threshold issues of due process or jurisdiction. We note that Applicant’s purported FORM response also does not address the falsification allegation. Consequently, even if he submitted that response and an error occurred in processing it, such an error was harmless because it likely had no affect on the outcome of the case. Adverse decision affirmed.

CASENO: 15-07665.a1

DATE: 05/25/2018

DATE: May 25, 2018

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In Re:)	
)	
-----)	ISCR Case No.15-07665
)	
)	
<u>Applicant for Security Clearance</u>)	

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 June 5, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline C (Foreign Preference), Guideline B (Foreign Influence), 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 February 23, 2018, after considering the record, Administrative Judge Thomas M. Crean denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The Judge found in favor of Applicant under Guideline C and against him on the remaining guidelines. In his appeal brief, Applicant raises no assertion that the Judge committed error in his unfavorable findings and conclusions pertaining to the falsification allegation under Guideline E. Because the unfavorable falsification findings and conclusions are sufficient independently to support the Judge’s overall adverse decision, we need not address Applicant’s assignments of error regarding other guidelines.

In the appeal brief, Applicant asserts that he submitted a response to Department Counsel’s File of Relevant Material (FORM) that did not make it into the record. Under Directive ¶ E3.1.29, we are prohibited from considering new evidence on appeal. However, we will consider new evidence insofar as it bears upon the threshold issues of due process or jurisdiction. *See, e.g.*, ISCR Case No. 15-02933 at 1 (App. Bd. Sep. 23, 2016). We note that Applicant’s purported FORM response also does not address the falsification allegation. Consequently, even if he submitted that response and an error occurred in processing it, such an error was harmless because it likely had no affect on the outcome of the case. *See, e.g.*, ISCR Case No. 16-01329 at 3 (App. Bd. Apr. 11, 2018).

The Board does not review cases *de novo*. The Appeal Board’s authority to review a case is limited to cases in which the appealing party has alleged the Judge committed harmful error. The adverse decision is sustainable on the unchallenged findings and conclusions under Guideline E.

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