

KEYWORD: Guideline c; Guideline B; Guideline E

DIGEST: Applicant raise a claim for the first time on appeal without sufficient specificity for the Board to conclude that he has a colorable claim. Adverse decision affirmed.

CASENO: 04-09353.a1

DATE: 12/17/2007

DATE: December 17, 2007

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 04-09353
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On February 10, 2006, DOHA 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), and Guideline E (Personal Conduct), of Department of Defense

Directive 5220.6 (Jan. 2, 1992, as amended)(Directive). Applicant requested a hearing. On July 17, 2007, after the hearing, Administrative Judge Christopher Graham denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: whether the Judge erred in making a factual finding that Applicant was the sole means of support for his parents residing in Pakistan, whether Applicant is entitled to a favorable security clearance decision as a result of his having been awarded a Top Secret security clearance from another government agency, and whether the Judge's decision is arbitrary, capricious or contrary to law. Finding no harmful error, the Board affirms the Judge's adverse security clearance decision.

The portion of this case germane to Applicant's appeal involves allegations of foreign influence, primarily as a result of the status of Applicant's parents as residents of and citizens of Pakistan, and Applicant's ties to them.<sup>1</sup> In his findings of fact, the Judge determined that Applicant was the sole source of support for his parents. On appeal, Applicant asserts that this finding is not supported by the record evidence and references a passage in the hearing transcript where he indicates that his uncle and brother live in the same house as his parents and also support the family.<sup>2</sup> After a review of the record, the Board concludes that it was error for the Judge to find that Applicant was his parents' only means of support. However, when evaluating this single factual error in the context of the totality of the record evidence and the entirety of the Judge's findings and conclusions, the Board concludes that this error was harmless. There is ample support in the record for the Judge's adverse security clearance decision.

Applicant asks the Board to take into account the fact that he passed a full scope polygraph for another government agency "that has full knowledge of all the issues brought into question by these proceedings" and that he was awarded a Top Secret clearance by them. Applicant's assertion bears on the issue of the application of the reciprocity provisions of Section 2-204 of the National Industrial Security Program Operating Manual (NISPOM). Section 2-204 reads as follows:

Federal agencies that grant access to classified information to their employees or their contractor employees are responsible for determining whether such employees have been previously cleared or investigated by the Federal Government. Any previously granted PCL<sup>3</sup> that is based upon a current investigation of a scope that meets or exceeds that necessary for the clearance required, shall provide the basis for issuance of a new clearance, without further investigation or adjudication unless significant derogatory information that was not previously adjudicated becomes known to the granting agency.

The issue of whether a prior security clearance held by Applicant might trigger the reciprocity provisions of Section 2-204 of the NISPOM was not raised below by Applicant. In his hearing

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<sup>1</sup>The Judge made formal findings in Applicant's favor on allegations under Guidelines C and E. Those findings are not at issue on appeal.

<sup>2</sup>Hearing Transcript, pp. 55-56.

<sup>3</sup>According to Section 1-300 of the NISPOM, a PCL is an employee's personal clearance.

testimony, Applicant made general references to previous clearances held by him in the context of providing background information to the Judge, but his testimony provides nothing specific in terms of the identities of the granting agencies, or the dates involved. Applicant's security clearance application, which is part of the record, contains no information about previous clearances. Similarly, Applicant's appeal assertions contain no specific information about the date of the granting of the particular clearance he is referencing, or the identity of the granting agency. There is no other evidence in the record to indicate whether or not the several prerequisites for the granting of reciprocity listed in Section 2-204 of the NISPOM have been satisfied in this case.

There is no presumption of error below and Applicants must present issues on appeal with sufficient specificity to enable the Board to carry out its appellate review responsibilities under the Directive. *See, e.g.*, ISCR Case No. 00-0429 at 3 (App. Bd. Jul. 9, 2001). On appeal, Applicant asks the Board to take into consideration the fact that he was granted an earlier clearance but he does not make a claim of reciprocity under Section 2-204 of the NISPOM. No such issue was raised below, and the record contains no details or corroborating evidence to provide even a threshold substantiation for any claim that Applicant is entitled to favorable disposition of this case as a result of an earlier security clearance adjudication. Based on the record before us, and Applicant's assertions on appeal, the Board will not assume that Applicant intended to raise a claim of error based on the requirements of Section 2-204. Accordingly, the Board concludes that Applicant fails to raise a colorable claim that DOHA processed his case in a manner inconsistent with applicable regulations, including the NISPOM.<sup>4</sup>

Applicant also asks the Board to reconsider the decision below and to reinstate his clearance. Inasmuch as the Board does not engage in *de novo* review, it construes Applicant's request as raising the issue of whether the Judge's decision is arbitrary, capricious, or contrary to law. The Board has considered the Judge's decision in light of the record as a whole, and concludes that it is reasonably supported by the evidence.

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<sup>4</sup>This case is distinguishable from the Board's disposition in ISCR Case No. 98-0320 (App. Bd. Apr. 8, 1999). In that case, a document providing specific details about a previously granted clearance was offered by Applicant at the hearing and admitted into evidence. Applicant relied on that evidence in making the specific argument, both at the hearing and on appeal, that the earlier grant of a clearance should result in a favorable disposition in the DOHA adjudication. With that background, the Board remanded the case with instructions to the Judge to allow the parties to develop the record concerning the applicability of Section 2-203 (the applicable NISPOM provision at the time on the subject of reciprocity) to Applicant's case.

**Order**

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board