

KEYWORD: Guideline J; Guideline B; Guideline E

DIGEST: Applicant's spouse works for the Lithuanian government as does his sister-in-law. Adverse decision affirmed.

CASENO: 04-11904.a1

DATE: 07/10/2009

DATE: July, 10, 2009

In Re:)	
)	
-----)	ISCR Case No. 04-11904
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Daniel Conway, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 14, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct), 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 April 28, 2009, after the hearing, Administrative Judge Elizabeth M. Matchinski 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 made factual errors and whether the Judge erred in her application of the Guideline B mitigating conditions.¹ Finding no harmful error, we affirm.

The Judge found that Applicant is a Defense contractor working in Lithuania. He is married to a Lithuanian woman who works for the Lithuanian government. His wife has a sister who also works for the Lithuanian government. Applicant's wife contacts her sister by e-mail once a month and by phone once every three or four months. Applicant's spouse has two grown children who live in Lithuania. In holding against Applicant, the Judge noted the Lithuanian citizenship of Applicant's wife, her sister, and her children; his wife's and sister's employment by the Lithuanian government; and that he lives in a house owned by his wife, giving him a financial interest in Lithuania. The Judge also noted that "Applicant has not shown that his sister-in-law's work . . . does not have military or defense implications." Decision at 15.

After reviewing the record, the Board concludes that the Judge's material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Applicant has not identified any harmful error likely to change the outcome of the case. He contends that the Judge erred in finding that he pays \$400 a month for health insurance, rather than \$400 annually, as he testified.² The Board notes that, in the Findings of Fact section of her decision, the Judge correctly stated that Applicant's premium was \$400 annually. The erroneous statement was contained in the Analysis section. Decision at 7, 16. In light of the entirety of the record evidence, this error is harmless. See ISCR 01-23362 (App. Bd. Jun. 5, 2006); ISCR Case No. 03-09915 (App. Bd. Dec. 16, 2004); ISCR Case No. 01-11192 (App. Bd. Aug. 26, 2002). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge's decision that "it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance" is sustainable on this record. Decision at 18. See also *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'").

¹The Judge's favorable findings under Guideline J and E, as well as his favorable finding under the first allegation of Guideline B, are not at issue in this appeal.

²" . . . I purchase annually Lithuanian health insurance for \$400." Tr. at 83.

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board