

KEYWORD: Guideline B; Guideline F

DIGEST: Applicant failed to make a *prima facie* showing that he had submitted evidence that did not make it into the record. The error in the Judge’s findings did not likely affect the outcome of the case. Adverse decision affirmed.

CASE NO: 14-00967.a1

DATE: 01/20/2015

DATE: January 20, 2015

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In Re:	)	
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	)	
Applicant for Security Clearance	)	
	)	

**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 April 24, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On October 30, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mary E. Henry 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 he was denied due process; whether the Judge’s findings of fact contained errors; and whether the Judge’s adverse decision was

arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline B are not at issue in this appeal. 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: Born and raised in Pakistan, Applicant attended college in the U.S. and became a U.S. citizen recently. In 2005, Applicant purchased a house, using credit cards to make the down payment. He refinanced the house two years later, using money from the refinance to pay the balances on a few of his credit cards. In 2009, Applicant was laid off from his job. He had no savings and was not able to pay his mortgage or credit card debts.

Applicant contacted the holders of his credit cards and his mortgage, requesting assistance. His mortgage company reduced his interest, and he is now current on this debt. He also negotiated a reduced payment on one of the SOR debts and successfully disputed another one. However, regarding the remaining three debts, he provided no documentation showing that they had been paid or settled.

Applicant states that he has changed his spending habits. He has moved to a smaller residence, with a reduced monthly rental expense. Additionally, he and his wife have moved their son to a public school, and they use public transportation. Applicant's wife receives \$1,800 a month as a stipend while working on an advanced degree. Applicant has not shown how he will make payments on any taxes that might come due as a result of his negotiated settlements.

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

The Judge cited to Applicant's evidence that he had reduced his living expenses. However, she noted that he had not settled or paid the three debts discussed above. She also stated that (1) he had not provided evidence of his income and ability to pay these debts; (2) he did not submit a budget; or (3) outline a plan for resolving his debts. She stated that without this information it is not possible to determine the status of his finances.

### **Discussion**

Applicant raises an issue of due process. In doing so, he asserts matters from outside the record. Although we normally do not consider new evidence, we have done so in the past when it pertains to an issue such as due process or jurisdiction. *See, e.g.*, ISCR 11-15005 at 2 (App. Bd. Jan. 24, 2014). Applicant contends that he submitted matters in response to the File of Relevant Material that did not make it into the record. However, the assertions in his Appeal Brief are not sufficient to constitute a *prima facie* showing that he in fact mailed or otherwise conveyed to DOHA the documents in question. To the extent that Applicant relies on evidence that was created after the close of the record, we cannot consider it. Directive ¶ E3.1.29. We resolve this issue adversely to Applicant.

Applicant claims that the Judge made an error in her findings. We examine a Judge's findings to see if they are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. Applicant states that the Judge erred in finding that his wife's stipend is \$1,800 a month. He states that it is actually \$18,000 a year. Applicant's argument is persuasive. The challenged finding appears to be an error. However, there is no reason to conclude that this error affected the overall outcome of the case. Therefore, it is harmless.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. 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: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board

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