

KEYWORD: Guideline B; Guideline C

DIGEST: As a threshold matter the official notice documents that Department Counsel cited are not contained in the record. Rather, Department Counsel has cited to the web sites where he obtained them. Due to the dynamic nature of the Internet, a reference to a document's URL in the case record is not sufficient to preserve the matter for meaningful appellate review. Nor can we consider in a vacuum, without reference to a properly developed record, whether a document was properly noticed by an Administrative Judge. Adverse decision remanded.

CASENO: 14-01655.a1

DATE: 11/03/2015

DATE: November 3, 2015

In Re:))	
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-----))	ADP Case No. 14-01655
))	
Applicant for Public Trust Position))	

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 trustworthiness designation.¹ On June 13, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On September 30, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello denied Applicant’s request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

As a threshold matter, one of the issues that Applicant has raised requires us to evaluate the Judge’s findings concerning official notice documents that Department Counsel has cited in the FORM, as well as the weight that the Judge assigned to these documents. However, the documents are not contained in the record. Rather, Department Counsel has cited to the web sites where he obtained them. We addressed a similar issue in ISCR Case No. 02-24875 (App. Bd. Mar. 29, 2006), where the Judge took official notice of a State Department document that was not in the case file. We stated in part that, “[b]ecause of the dynamic nature of the Internet, a reference to a document’s URL in the case record would not necessarily be sufficient to preserve the matter for meaningful appellate review.” *Id.* at note 3. We also noted that “[t]he Board cannot consider in a vacuum, without reference to a properly developed record, whether a document was properly noticed by an Administrative Judge.” Accordingly, we remanded that case to the Judge for the purpose of locating the document and making it part of the case file. In the case before us, Applicant has raised issues that require us to evaluate the Decision in light of documents that are not part of the record. We conclude that the best resolution is to remand the case to the Judge to preserve in the record all the official notice documents referenced in the FORM. The other issues raised by Applicant are not ripe for adjudication.

Order

The Decision is **REMANDED**.

Signed: Michael Ra’anan

Michael Ra’anan

Administrative Judge

¹The Statement of Reasons characterizes this case as a security clearance adjudication, as does correspondence from DOHA to Applicant prior to the Decision. On the other hand, the File of Relevant Material (FORM) and the Judge’s Decision treat it as a trustworthiness determination. Applicant’s job appears to be one for which a trustworthiness determination would be appropriate. This apparent discrepancy does not affect the outcome, insofar as the Guidelines apply to all adjudications under the Directive, including both security clearance and public trust cases. *See Memorandum, Implementation of Adjudicative Guidelines*, dated August 30, 2006, contained in Directive, Enclosure 2. The same standard applies to both security clearances and trustworthiness determinations as well. *See, e.g., ADP Case 12-04343 at 3 (App. Bd. May 21, 2013).*

Chairperson, Appeal Board

Signed: Jeffrey D. Billett _____
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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