

KEYWORD: Guideline B, Guideline F

DIGEST: The contention of Applicant's Counsel that Applicant's relationship with his sisters has "greatly diminished since the passing of his mother" fails for a lack of specificity because he has failed to cite to any record evidence to support that proposition. The appealing party has the burden of raising and demonstrating factual or legal error by the Judge and must set forth its assignments of error with specificity. Adverse decision affirmed.

CASENO: 18-01818.a1

DATE: 06/25/2019

DATE: June 25, 2019

In Re:)	
)	
-----)	ISCR Case No. 18-01818
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 20, 2018, 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 March 20, 2019, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant, who is 60 years old, has worked for a defense contractor since 2017. He has worked for other defense contractors in the past and has previously held a security clearance. In responding to the SOR, he admitted all of the SOR allegations.

Applicant was born in Lebanon and attended a military academy there for a period before resigning. In the early 1980s, he came to the United States on a student visa. After graduating from a U.S. university, he returned to Lebanon. He married a U.S. citizen and returned to the United States in the late 1980s. Following their divorce, he remained in the United States and became a U.S. citizen in the early 1990s. In 2003, he returned to Lebanon and married a Lebanese citizen. In 2009, he returned to the United States. He later divorced his second wife with whom he has two minor children. The children are U.S. citizens, but they reside in Lebanon with their mother.

In 2011, Applicant returned to Lebanon for about five years to care for his ailing mother who later passed away. His father is also deceased. He has two sisters who are citizens and residents of Lebanon. One sister owns a store, and the other is a housewife. The occupations of their spouses are unknown. Applicant borrowed money from one sister when he lived in Lebanon. He talked to his sisters weekly when his mother was alive. Since her passing, the frequency of his contact with his sisters is unknown. The U.S. Department of State discourages U.S. citizens from traveling to Lebanon due to crime, terrorism, and armed conflict. Kidnapping and refugee camps in Lebanon pose security threats. Lebanon also has significant human rights issues.

Under Guideline F, the SOR alleges that Applicant has delinquent debts, including a Federal tax debt of \$39,000. For three of the delinquent debts totaling over \$13,000, he submitted no documentary evidence showing efforts to resolve them. In his security clearance application, he disclosed that he failed to file his Federal and state income tax returns for 2012, 2014, and 2015, and estimated he owed about \$27,000 in past-due Federal taxes for 2012 and 2015. In his SOR response, he provided documentation of an IRS payment agreement, but he submitted no proof of payments. He also provided notices that he owes past-due taxes for other years, but was entitled to a refund in 2017.

The Judge's Analysis

Due to the risks of crime, terrorism, and armed conflict in Lebanon, a heightened risk of foreign exploitation and a potential conflict of interest arises from Applicant's children being in the custody of a citizen and resident of that country. An alleged debt owed to Applicant's sister is not delinquent because she has not established a repayment date. Applicant's other debts are numerous and recent. He has not established that any of the mitigating conditions apply in his case.

Discussion

Applicant's Counsel contends, "The nature of [Applicant's] relationship with his [sisters] overseas has greatly diminished since the passing of his mother. The only reason he communicated with his sisters as frequently as he did in the past was because they were caring for his ailing mother." Appeal Brief at 10. As support for that contention, Applicant's Counsel cites only to Page 3 of the decision. On that page, however, the Judge stated, "When his mother was alive, he talked to his sisters weekly because they cared for his mother. The record does not reflect the frequency of his contact with his sisters now that his mother has passed away." The contention of Applicant's Counsel that Applicant's relationship with his sisters has "greatly diminished since the passing of his mother" fails for a lack of specificity because he has failed to cite to any record evidence to support that proposition. The appealing party has the burden of raising and demonstrating factual or legal error by the Judge and must set forth its assignments of error with specificity. *See, e.g.*, ISCR Case No. 17-03372 at 2-3 (App. Bd. Oct. 19, 2018)(discussing the reasons why assignments of error must be set forth with specificity).

Applicant's Counsel also argues that the Judge did not consider all of the record evidence and did not properly apply the mitigating conditions and whole-person concept. In his arguments, he cites, for example, to such matters as Applicant's periods of unemployment, divorces, and IRS payment agreement, as well as to the nature and extent of his foreign contacts. His arguments, however, are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-03978 at 3-4 (App. Bd. Mar. 6, 2019). We give due consideration to the Hearing Office cases that Applicant's Counsel has cited in support of his arguments, but they are neither binding precedent on the Appeal Board nor sufficient to undermine the Judge's decision. *Id.* at 4.

The Judge examined the relevant evidence 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, Encl. 2, App. ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility 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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

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