

KEYWORD: Guideline B; Guideline F

DIGEST: In an appeal of a Guideline B case, how a Hearing Judge may have decided another case involving a different applicant with a different background and contacts in a different foreign country is not a relevant consideration. The Hearing Office decisions cited in this appeal brief do not establish any reason for concluding the Judge erred in this case. Adverse decision affirmed.

CASE NO: 19-00657.a1

DATE: 07/21/2021

DATE: July 21, 2021

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In Re:)	
-----)	ISCR Case No. 19-00657
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Asya Hogue, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 1, 2019, 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 hearing. On April 27, 2021, after the hearing, Defense Office of Hearings and

Appeals (DOHA) Administrative Judge Michael H. Leonard 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. The Judge's favorable findings under Guideline F were not raised as an issue on appeal and are not discussed below. Consistent with the following, we affirm.

The Judge's Pertinent Findings of Fact

Applicant, who was born in Sudan, works for a defense contractor. He came to the United States in the early 2000s and became a U.S. citizen about five years later. All of his family members live in Sudan. This includes his wife, siblings, half-siblings, and parents-in-law, all of whom are citizens of Sudan. His father passed away several years ago and his mother passed away about two and half years ago. Prior to his mother's passing, Applicant spoke twice a month to a brother who cared for her. Another brother served in a senior position in a Sudanese government ministry but retired several years ago. His sister is a former high-level official in the Sudanese government. Between 2010 and early 2020, Applicant made four trips to Sudan that ranged in length from a couple of months to four or five months. He has not spoken to his siblings since expressing condolences following his mother's passing. One of his half-siblings is an official with a Sudanese government ministry. He has little or no contact with his half-siblings.

Applicant has been married for about seven years. They have no living children. He provides his wife monthly financial support. "He retained the services of an immigration lawyer who, as of October 2020, anticipated filing an immigration petition soon despite the current restriction of immigration from Sudan." Decision at 3. Applicant has no business, financial, or property interests in Sudan. He does not own a home in the United States and uses a friend's address as his current residence. He votes in the U.S. elections.

In 2019, the Sudanese government was overthrown and the transition to a new government has not been entirely peaceful. In 1993, Sudan was designated a State Sponsor of Terrorism, but it was removed from that list in December 2020. This removal allows the United States to provide more "robust support" to Sudan. Decision at 4. Sudan has a poor human-rights record.

The Judge's Pertinent Analysis

The evidence presented establishes Disqualifying Conditions 7(a) and 7(b). Applicant appears to be responsible, cooperative, and truthful. After considering the geopolitical situation in Sudan, the Judge concluded:

The entirety of [Applicant's] family ties are to Sudan while he has no family ties to the United States. At the same time there appear to be no circumstances regarding Applicant personally that give rise to doubt about his suitability for a security

clearance, but that by itself does not carry sufficient weight.

Given the totality of facts and circumstances, I cannot conclude that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of the Sudanese government or his family members who are citizens and residents in Sudan. Likewise, I cannot conclude that there is no conflict of interest. [Mitigating Conditions] 8(a) and 8(b) are not fully applicable. [Decision at 7.]

Discussion

In his appeal brief, Applicant does not challenge any of the Judge's specific findings of fact. Rather, he contends the Judge failed to adhere to Executive Order 10865 and the Directive by not considering all of the record evidence and by not properly applying the mitigating conditions and whole-person concept. He argues, for example, that the Judge failed to consider that he has provided services to the U.S. military overseas since 2017, that significant steps have been taken to further his wife's immigration to the United States, and that he has not had contact with his siblings since shortly after his mother's passing. The Judge, however, made findings about those matters. None of his arguments are sufficient to rebut the presumption that the Judge considered all of the evidence in the record or 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. 19-01400 at 2 (App. Bd. Jun. 3, 2020).

Applicant's brief also presents arguments based on Guideline B Hearing Office decisions involving another country. His reliance on those decisions is misplaced. Those decisions rest upon particular factual circumstances that do not establish any precedent and are distinguishable from the case under review. *See, e.g.*, ISCR Case No. 19-00327 at 2 (App. Bd. May 20, 2020)(decisions by Hearing Office Judges are not legally binding precedent on the Appeal Board or other Judges). Each case must be decided on its own merits. Directive, Encl. 2, App. A ¶ 2(b). In general, each case presents unique facts and circumstances. As an example of this latter point, the nature of a particular foreign government involved in a foreign influence case is a key consideration because it provides context for other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. *See, e.g.*, ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017). In an appeal of a Guideline B case, how a Hearing Judge may have decided another case involving a different applicant with a different background and contacts in a different foreign country is not a relevant consideration. The Hearing Office decisions cited in this appeal brief do not establish any reason for concluding the Judge erred in this case.

Applicant has failed to establish that the Judge committed any harmful error. 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. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Order

The Decision of the Judge 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