

KEYWORD: Guideline E; Guideline F; Guideline B

DIGEST: Applicant cites to Hearing Office cases in support of his argument on appeal. However, each case must be decided on its own merits. Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. Adverse decision affirmed.

CASE NO: 19-01891.a1

DATE: 07/16/2021

DATE: July 16, 2021

| | | |
|----------------------------------|---|------------------------|
| |) | |
| In Re: |) | |
| ----- |) | ISCR Case No. 19-01891 |
| |) | |
| Applicant for Security Clearance |) | |
| |) | |

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 17, 2019, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct), Guideline F (Financial Considerations), and Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 12, 2021, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey 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 Guidelines E and F are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact and Analysis

Applicant, who is in his sixties, was born in Sudan, where he attended college. The SOR allegations at issue in this case stated that Applicant has four siblings and a son who are citizens and residents of Sudan. The SOR also alleged that Applicant has provided \$7,000 to \$8,000 in financial support yearly since 2009 to one of his siblings and about \$3,000 yearly since 2005 to his son.¹ The Judge also made findings regarding matters not alleged in the SOR, that (1) Applicant's wife is a citizen and resident of Sudan; (2) Applicant provided \$15,000 in support to his wife; (3) Applicant traveled to Sudan numerous times; (4) Applicant falsely stated on a food stamp application that he did not own a car; and (5) Applicant did not disclose part-time employment on the same application.

Applicant enjoys an excellent reputation for his duty performance, "always plac[ing] the mission before himself." Decision at 7. His character references support his effort to obtain a security clearance. Applicant has received a unit coin and certificate of appreciation for his contributions to mission accomplishment.

Sudan has experienced political instability in the past few years due to the overthrow of its President and the establishment of a transitional military counsel. There has been violence in Khartoum and other cities across Sudan, resulting in limitations on travel by U.S. Government personnel. Sudan has been designated a state sponsor of terrorism, supporting international terrorist plots. Terrorist groups are active in Sudan and have stated an intent to harm westerners and western interests.

The SOR alleged contacts with other siblings in addition to those described in the above summary of the Judge's findings. The Judge found that Applicant's contacts with these other siblings were not sufficient to raise concerns. However, he concluded that Applicant's connections with the four siblings referenced above and with his son, along with his financial support for them, raised security concerns that he concluded were not mitigated by the evidence Applicant presented. Even though Applicant's contact with these family members may not be frequent, the evidence as a whole does not rebut the presumption that he has ties of affection for them. The Judge stated that he considered the non-alleged conduct for such things as evaluating Applicant's credibility, his case for mitigation, and in performing a whole-person analysis. Overall, the Judge concluded that Applicant had not met his burden of persuasion regarding mitigation.

Discussion

Applicant contends that the Judge did not consider significant record evidence that supports his effort to obtain a clearance. He also argues that the Judge weighed the evidence inconsistently regarding his various siblings. Applicant's argument is, essentially, a disagreement with the manner

¹In his 2017 security clearance application (SCA), Applicant stated that his most recent contacts with these four siblings had been in 2014 and 2015. In a counterintelligence screening conducted a month later, he stated that he communicated with two of these siblings about 12 times a year and provided no information about contact with the other two. Decision at 5. See Government Exhibit (GE) 1, SCA, at 25-29 and GE 3, Counterintelligence Screening, at 1-2.

in which the Judge weighed the evidence, which is not enough to undermine the Judge's analysis. We conclude that Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he demonstrated that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 18-02074 at 2 (App. Bd. Aug. 27, 2019). Among other things, we note the non-alleged conduct, which supports the Judge's conclusions regarding mitigation. *See, e.g.*, ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017).

Applicant cites to Hearing Office cases in support of his argument on appeal. However, each case must be decided on its own merits. Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 18-02074 at 2.

Conclusion

The record supports a conclusion 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 adverse 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 is **AFFIRMED**.

Signed: Michael Y. Ra'anan
Michael Y. 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