KEYWORD: Guideline B

DIGEST: Applicant is apparently contending that a “concern” (a term the Judge used) is raised at a lesser threshold than a “doubt” (a term the Court used) and, therefore, the Judge was applying a lesser adjudicative standard than the Court. This contention lacks merit. An admitted or proven SOR allegation generally establishes one or more security concerns, which create doubt. The terms “security concern,” “concern,” and “doubt” are often used interchangeably in security clearance decisions. Of course, an established “security concern” or “doubt” may or may not be mitigated depending on the evidence presented. Adverse decision affirmed.

CASE NO: 20-01099.a1

DATE: 07/12/2021

DATE: July 12, 2021

In Re:	)	
---------------------------	)	ISCR Case No. 20-01099
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 September 23, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On April 28, 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 issues on appeal: whether Applicant was denied due process because the Judge failed to apply the proper adjudicative standard and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The SOR alleged 17 Guideline B allegations. The Judge found in favor of Applicant on ten of those allegations. Those favorable findings were not raised as an issue on appeal and are not discussed below.

The Judge's Findings of Fact and Analysis

Applicant, who is in his 50's, was born in Egypt. He earned a bachelor's degree and master's degree in Egypt. He immigrated to the United States in the 1990s. He earned a master's degree and Ph.D. in the United States. He has been a U.S. citizen for about 13 years. He has not taken any action to renounce his Egyptian citizenship.

Applicant's spouse and three children are dual citizens of the United States and Egypt and residents of the United States. His mother, two sisters, and father-in-law are citizens and residents of Egypt. His third sister is a citizen of Egypt who was residing in another Middle Eastern country, but she has returned to Egypt after he completed his security clearance application,.

Applicant's mother and two of his sisters were employed by an entity that may have a connection to the Egyptian Government. At the hearing, Applicant was unsure of their current employment status. His father-in-law also worked for that same entity, was in a semi-retired position as recently as 2019, and may be receiving a pension from the Egyptian Government or that entity. Applicant communicates with his mother every week or every other week. In 2017, he communicated with his sisters on a monthly basis but testified he communicates with them every two or three months. Between 2009 and 2019, Applicant visited Egypt on 13 occasions. His spouse and children usually accompanied him on those trips during which they visited family members.

Several terrorist organizations operate in Egypt. In 2014, the most active terrorist group operating there pledged its allegiance to ISIS. The U.S. Department of State has assessed Cairo as a critical-threat location for terrorism directed at U.S. Government interests. The Egyptian Government does not respect the full spectrum of human rights.

Applicant's relationships with family members in Egypt create a potential conflict of interest because terrorists could place pressure on them in an effort to cause him to compromise classified

information. Those relationships also create a heightened risk of foreign inducement, manipulation, pressure, or coercion. Applicant did not meet his burden of showing that his relatives in Egypt are unlikely to come to the attention of those interested in acquiring U.S. classified information. He failed to mitigate the Guideline B security concerns.

Discussion

A Judge is tasked with applying the "clearly consistent with the national interest" standard in determining whether to grant or continue a security clearance for an applicant. *See, e.g.*, Directive ¶¶ 2.3; 3.2; 4.2; and Encl 2, App. A ¶¶ 1(d) and 2(c). In his appeal brief, Applicant contends that the Judge deprived him of due process by failing to apply the proper standard. We find no merit in this contention. At points in his argument, Applicant incorrectly refers to the adjudicative standard as the "standard of clear and consistent." Appeal Brief at 7 and 9. Based on our review of the Judge's decision, we find no basis to conclude that he failed to apply the proper adjudication standard. Applicant has failed to establish he was denied the due process afforded him under the Directive.

As best we can discern, Applicant also appears to be making a distinction between a "concern" and a "doubt" based on the Judge's citation to *Dorfmont v. Brown*, 913 F.2d 1399 (9th Cir. 1990). In the last paragraph of his whole-person analysis, Judge stated, "It is well settled that once a **concern** arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. *See Dorfmont*, 913 F.2d 1401." Decision at 17, emphasis added. On the cited page in *Dorfmont*, the Court stated:

> Because of the extreme sensitivity of security matters, there is a strong presumption against granting a security clearance. Whenever any **doubt** is raised about an individual's judgment or loyalty, it is deemed best to err on the side of the government's compelling interest in security by denying or revoking clearance. [Emphasis added.]

Applicant is apparently contending that a "concern" (a term the Judge used) is raised at a lesser threshold than a "doubt" (a term the Court used) and, therefore, the Judge was applying a lesser adjudicative standard than the Court. This contention lacks merit. An admitted or proven SOR allegation generally establishes one or more security concerns,[1] which create doubt. The terms "security concern," "concern," and "doubt" are often used interchangeably in security clearance decisions. Of course, an established "security concern" or "doubt" may or may not be mitigated depending on the evidence presented.

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[1] Security concerns are identified in "*The Concern*" paragraph of each Adjudicative Guideline. The applicable disqualifying conditions identify conduct and circumstances that could raise those security concerns. Directive, Encl. 2, App. A. An SOR is intended to place an Applicant on notice of the Government's allegations of conduct and circumstances establishing security concerns that show why it is not clearly consistent with the national interest to grant or continue a security clearance. *See* Directive ¶¶ E3.1.2 and E3.1.3.

Applicant's brief contends that one of his children is only a U.S. citizen. His testimony supports that contention. Tr. at 29-30. Although the Judge erred in finding all of his children were dual citizens of the United States and Egypt, this was a harmless error because it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 19-01220 at 3 (App. Bd. Jun. 1, 2020).

In his appeal brief, Applicant 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 his contact with Egypt is minimal and his ties there are causal. None of his arguments, however, 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 highlights that Government Exhibit 2 (the summary of his background interview) provides his foreign contacts have no affiliation with a foreign government and his association with his foreign contacts cannot be used to blackmail, coerce, or place him under duress. Those highlighted comments, however, summarize Applicant's answers to the interviewer. They do not constitute the interviewer's considered opinion as to Applicant's worthiness for a clearance. *See, e.g.*, ISCR Case No. 15-05344 at 3 (Dec. 6, 2017). In any event, even if an investigator provided such an opinion, it would not bind the DoD in its evaluation of an applicant's case. *Id.*

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