

KEYWORD: Guideline F; Guideline B; Guideline E

DIGEST: While we recognize that a Judge’s conclusion that an applicant lied to an investigator—even when not alleged in the SOR—is likely to have an impact on his or her weighing of the mitigating evidence, such an error here was harmless because it did not likely affect the outcome of the case. In responding to the SOR, Applicant admitted he was dismissed from a U.S. university for cheating on two examinations in 2015. The evidence supports the Judge’s conclusions that these cheating incidents are not minor and reflect a pattern of dishonesty. These incidents continue to raise doubts about his reliability, trustworthiness, and good judgment. Adverse Decision Affirmed.

CASE NO: 19-01884.a1

DATE: 09/03/2021

DATE: September 3, 2021

In Re:)	
)	
-----)	ISCR Case No. 19-01884
)	
Applicant for Security Clearance)	

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 security clearance. On April 30, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence), Guideline E (Personal Conduct), 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. After Applicant submitted a response to Department Counsel’s File of Relevant Material (FORM), the Government withdrew the Guideline F allegations. On May 25, 2021, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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 the Judge erred in her findings of fact and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge’s decision.

The Judge’s Findings of Fact and Analysis

Applicant, who is of Lebanese descent, entered the United States in the late 1990s and became a U.S. citizen about nine years later. Divorced, he has no children. He has worked with U.S. forces in Iraq. After leaving Iraq without authorization to visit his ill mother in Lebanon, he was fired from that position. While a U.S. citizen, he obtained a Lebanese passport to visit a sibling in another Middle Eastern country. In his 2018 security clearance application, he reported that he was then living in Lebanon and had been doing so for about a year and a half. Since then, he received a bachelor’s degree from a university in Lebanon.

Under Guideline B, the SOR alleged that Applicant that he was a dual citizen of Lebanon and the United States, that he maintained a bank account in Lebanon with a balance of about \$4,000, that his sibling was a citizen of Lebanon and a resident of another Middle Eastern country, that he has a cousin who is a citizen and resident of Lebanon and who works for a government ministry, and that he has close contact with three aunts and a cousin who are citizens and residents of Lebanon. When he returned to Lebanon about six years ago, he has maintained weekly in-person contact with an aunt. Lebanon has been plagued by corruption and human rights abuses. The Department of State advises U.S. citizen to avoid travel in certain areas of Lebanon due to terrorism or potential violence. “Applicant admits his close contact with his family in Lebanon with whom he is bound by affection.” Decision at 6. His foreign ties create a potential conflict of interest and a heightened risk of exploitation, inducement, etc. His decision to leave Iraq without authorization to visit his then ill mother in Lebanon reinforces the Government’s concerns. He presented no information about his assets in the United States. He has not mitigated the foreign influence security concerns.

Under Guideline E, the SOR alleged that Applicant was dismissed from a university for cheating on two examinations in 2015. Although he first denied cheating to the university, he later admitted it after consulting with an attorney. He engaged in a pattern of dishonesty. Such conduct

was not minor. He has not mitigated the personal conduct security concerns.

Discussion

In his appeal brief, Applicant contends that the Judge erred in finding he lied to the investigator. This argument has merit. The Judge concluded, “In his subject interview [Applicant] lied to the investigator and stated that nothing came of the situation.” Decision at 9, emphasis added. Applicant’s summary of his background interview does not support a finding that he lied to the investigator about the cheating incidents alleged in the SOR. During that interview, Applicant discussed both of the alleged cheating incidents with the investigator and indicated he initially denied cheating to school officials about the first incident but later admitted to the officials that he did cheat. Applicant told the investigator that he was dismissed from the university for cheating. From our review of the summary of the background interview, it appears the Judge erred by mixing unrelated incidents addressed in that interview. The phrase “nothing came of it” in the summary (Item 4, Enhanced Subject Interview at 6) that the Judge paraphrased in her analysis involved a suspected cheating incident at a different university that was unrelated to the cheating incidents alleged in the SOR. There is no basis for concluding Applicant lied to the investigator when he stated nothing came of that unalleged incident.

While we recognize that a Judge’s conclusion that an applicant lied to an investigator—even when not alleged in the SOR—is likely to have an impact on his or her weighing of the mitigating evidence, such an error here was harmless because it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013). In responding to the SOR, Applicant admitted he was dismissed from a U.S. university for cheating on two examinations in 2015. In a written statement, a professor at that university noted that he met with Applicant “on several occasions throughout spring semester to discuss academic dishonesty in [that course.]” Item 2 at 10. During the first alleged incident, Applicant met with the Dean, Associate Dean, and professor to discuss his suspected cheating on a quiz. In that meeting, Applicant denied any form of academic dishonesty. About four days later, Applicant met again with the Associate Dean and the professor to review security footage that showed Applicant was not in exam room when he was still logged into a computer system as taking the test. An examination of the system did not corroborate Applicant’s assertion that a computer glitch made it appear he was working on the quiz when he was not present in the room with a proctor. At this second meeting, Applicant continued to deny any cheating. The next day Applicant requested a meeting with the professor, admitted cheating on the quiz, and indicated that it would not happen again. He was required to retake the quiz even though he knew he would be assigned the grade of zero for it. A little over a month later, two professors observed Applicant cheating on the final exam for that course. They later met with Applicant who admitted cheating and pleaded for another chance. The evidence supports the Judge’s conclusions that these cheating incidents are not minor and reflect a pattern of dishonesty. These incidents continue to raise doubts about his reliability, trustworthiness, and good judgment.

Applicant’s remaining arguments amount to a disagreement with the Judge’s weighing of the evidence. He argues, for example, that he does not have immediate family members residing in Lebanon, that he traveled there to complete a college degree, and that he has safeguarded information

for the U.S. military in the past. None of his arguments, however, are enough to rebut the presumption that the Judge considered all of the evidence in the record or sufficient 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 asks if the Appeal Board can reach out to military personnel and his friends to inquire about his true character. We do not have authority to conduct an additional investigation of an applicant. *See, e.g.*, ISCR Case No. 00-0140 at 2 (App. Bd. Sep. 19, 2000).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record.

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