



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 APPEAL BOARD
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Date: August 25, 2022

In the matter of:)
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 Applicant for Security Clearance)

ISCR Case No. 19-01697

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 May 20, 2021, 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 hearing. On April 26, 2022, after close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Elizabeth M. Matchinski 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 failed to properly consider all available evidence and whether she misapplied the mitigating conditions, rendering her adverse decision arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

Background

Following amendment at hearing, the SOR alleged under Guideline F that Applicant owed delinquent debts on four accounts. Under Guideline E, the SOR alleged that Applicant was arrested for simple assault in April 2015 for punching his wife; was terminated from a job in November 2015 after punching a co-worker; lied to his employer in 2017 on three separate occasions; and falsified the answers to four questions on his March 2018 security clearance application (SCA). Under Guideline B, the SOR alleged that Applicant has family members, all citizens of Iraq, who live in Iraq, the United Arab Emirate (UAE), Egypt, and Turkey. Upon Government request, the Judge took administrative notice of current political conditions in those four countries. The Judge found for Applicant on all Guideline F allegations, three Guideline E allegations, and one Guideline B allegation and found adversely to Applicant on the remaining Guideline E and Guideline B allegations. The favorable findings are not raised as an issue on appeal.

The Judge's Findings of Fact and Analysis

Applicant is in his early forties. Born in Iraq, he married his spouse there in 2004. They fled the country in 2006 and ultimately immigrated to the United States as refugees in 2009. They have two children: one born in Iraq and one in the United States. Both he and his spouse became naturalized citizens in 2014. In 2018, he applied for a DoD security clearance for work as a contract linguist. He served as a translator from January 2019 through October 2021, including on training missions overseas. During his background investigation, Applicant underwent a counterintelligence security screening (CSS) interview in February 2018 and personal subject interviews (PSIs) in March 2018 and May 2018.

Guideline E Allegations

In April 2015, Applicant was arrested and charged with a misdemeanor domestic assault on his wife (SOR ¶ 2.a.). The charge was eventually *nolle prossed*. During his CSS interview, he indicated that he had argued with his spouse and was arrested for simple assault for physically restraining her in front of the police. During his March 2018 PSI, Applicant stated that he was arrested after punching his wife repeatedly in the face and chest. At hearing, he denied both the assault and the arrest.

On his March 2018 SCA, in regards in each of his listed employments, Applicant answered “No” to the question of whether he was fired; quit after being told he would be fired; left by mutual agreement following charges or allegations of misconduct; or left by mutual agreement following notice of unsatisfactory performance (SOR ¶ 1.h.). In his subsequent March 2018 PSI, Applicant reportedly admitted that he left one employment after he punched a co-worker in the face, was questioned by police about the incident, and was advised by the staffing agency that he would not be welcomed back at the job site (SOR ¶ 2.b.). At hearing, Applicant denied that he punched the co-worker and asserted that he simply walked off the job site after an argument.

During his May 2018 PSI, Applicant was asked about being reprimanded for absences while working for a particular employer. Applicant admitted to the background investigator that he had lied to supervisors about the reasons for three different absences (SOR ¶¶ 2.c. – 2.e.). In one instance, he told the staffing company that he went to Iraq for the funeral of his brother, who he claimed had died in an explosion. Instead, Applicant needed the time off to pursue another employment opportunity. When asked by the background investigator whether his supervisor was aware that he lied, Applicant responded negatively, described himself as “a good liar,” and stated that it was okay to tell “white lies.” Decision at 9, citing GE at 2. At hearing, Applicant asserted that he won’t make false statements in the future.

Guideline B

Applicant’s family and his wife’s family are all Iraqi citizens. In 2018, he reported the following concerning their residences, occupations, and degree of contact with him. Two sisters were housewives in Iraq. Four sisters lived in the UAE, where one worked outside the home as a schoolteacher. One sister was a housewife in Egypt. By social media, he had daily contact with the sister in Egypt, weekly contact with one sister in the UAE, and monthly contact with the remaining sisters. Two of his brothers resided in the UAE; neither worked for the government or military. Another brother lived in Iraq and was employed by a ministry of the Iraq government since 1994. Via social media, he had weekly contact with his brothers in the UAE and monthly contact with his brother in Iraq.

His wife’s parents and sisters are resident citizens of Iraq. His father-in-law worked for the Iraqi government in its police from 1986 until 2005. Her mother and sisters were not employed outside the home. Her three brothers were Iraqi citizens living in Turkey. In 2018, he reported contact with his various in-laws that varied from daily to monthly. Between 2010 and 2018, Applicant provided financial support to his wife’s parents in Iraq and his sister in Egypt.

Since coming to the United States in 2009, Applicant has returned to Iraq for visits in 2014 and 2017 and visited family members in the UAE in 2014 and 2019. At hearing, Applicant asserted that he recognized after working as a linguist that ties with his family would affect his job, so he cut off contacts. He denied any contact with his siblings in Iraq since his trip in 2017. He denied any contact since 2019 with his siblings who reside in the UAE and Egypt. Applicant testified that he simply stopped calling them and that they are unaware of the reasons for him doing so. At hearing, Applicant also denied any contact with his in-laws in Iraq or Turkey since 2017 and stated that he and his wife no longer provide any financial support. He stated that he does not know when his wife last spoke with her family.

Character and Employment References

In June 2020, Applicant received a certificate of appreciation from the squadron that he supported as a linguist. Additionally, U.S. military members of the mission submitted letters attesting to his professionalism, dedication, and expertise as a translator.

Judge's Analysis

The evidence establishes six incidents that raise personal conduct security concerns: assaultive behavior against his spouse; assaultive behavior against a former co-worker; three lies to his employer in 2017 and 2018 about his reasons for requesting leave and for leaving the job; and a misrepresentation on his SCA about the reason for him leaving a particular employment. His characterization of his false statements to his employer as “white lies” make it difficult to conclude that his current denials that he assaulted his wife and co-worker can be relied on and that the dishonesty he exhibited is unlikely to recur.

There is no evidence that Applicant's siblings or his wife's family members have engaged in any activities contrary to U.S. interests or that they have been targeted or pressured. However, the risk of terrorism is very real in Iraq, Egypt, and Turkey. Additionally, Turkey is a source and transit country to foreign terrorist fighters seeking to join ISIS and other terrorist groups fighting in Syria and Iraq, all four countries involved have significant human rights issues, Egypt has been implicated in recent economic and technological espionage, and U.S. protected technology has passed through the UAE to destinations such as Iran and Syria.

One of Applicant's brothers works for Iraq's government. Not enough is known about this brother's activities or position to allay that concern that his government employment heightens the risk. “The risk of indiscriminate acts of terrorism and the human rights issues in all four countries preclude full mitigation under AG ¶ 8(a).”¹ Decision at 23.

Applicant has partially mitigated under AG ¶ 8(b).² His desire to continue work as a linguist for the US is consistent with allegiance to his adopted home. Applicant and his spouse are naturalized citizens and own their home in the United States.

Regarding AG ¶ 8(c),³ Applicant asks the Government to believe that he ended his contacts with his family and in-laws in 2019 without explaining to his relatives the reasons why. Even if that is true, it is unclear that his spouse has ended her contacts with her family. In light of all the facts and circumstances, the risk of undue foreign influence is not fully mitigated.

¹ AG ¶ 8(a): the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States. Directive, Encl. 2, App. A.

² AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest. Directive, Encl. 2, App. A.

³ AG 8(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation. Directive, Encl. 2, App. A.

Discussion

Applicant has not challenged any of the Judge's specific findings of fact. Instead, he asserts that the Judge failed to consider all of the evidence and failed to apply the mitigating conditions properly under both Guidelines B and E, rendering her decision arbitrary, capricious, and contrary to law. For example, under Guideline B, Applicant asserts that the Judge committed a "clear error" in her analysis under AG ¶ 8(a) in finding that the unknown nature of Appellant's brother's position within the Iraqi government alone precluded full mitigation. Appeal Brief at 15. This argument lacks merit. First, the Judge did not rely solely upon the lack of information about the brother's position, but instead concluded that "[t]he risk of indiscriminate acts of terrorism and the human rights issues in all four countries preclude full mitigation under AG ¶ 8(a)." Decision at 23. Second, the burden was on Applicant to show the security concerns arising from his brother's position with the Iraqi government were mitigated. Undoubtedly, the Judge could consider the absence of evidence about the brother's position in her analysis of this mitigating condition.

Under Guideline E, Applicant asserts that the Judge failed to consider AG ¶ 17(c).⁴ He argues that the allegations in question were "minor isolated incidents that the [Department] counsel collected to create a narrative of a deceptive person." Appeal Brief at 18. Our review of the record reveals sufficient evidence to support the Judge's determination that the incidents "reflect a pattern of dishonesty." Decision at 19.

The remainder of Applicant's brief is fundamentally an argument that the Judge misweighed the evidence. None of Applicant's arguments, however, are enough to rebut the presumption that the Judge considered all of the record evidence or to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Moreover, the Judge complied with the requirements of the Directive in her whole-person analysis by considering all evidence of record in reaching her decision. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020). Although we give due consideration to the Hearing Office cases that Applicant's Counsel has cited, they are neither binding precedent on the Appeal Board nor sufficient to undermine the Judge's decision. *See, e.g.*, ISCR Case No. 17-02488 at 4 (App. Bd. Aug. 30, 2018).

Applicant has failed to establish that the Judge committed any harmful error or that he should be granted any relief on appeal. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the record. "The general standard is that a clearance may be granted only when 'clearly consistent with 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 national security."

⁴ AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment. Directive, Encl. 2, App. A.

Order

The decision is **AFFIRMED**.

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

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Member, Appeal Board