

KEYWORD: Guideline B; Guideline C; Guideline F

DIGEST: It was in accordance with the Directive for the Judge grant Department Counsel' motion to amend the SOR to conform to the evidence. The Judge permitted Applicant more than a month to address the new allegations. Adverse decision affirmed.

CASENO: 14-03112.a1

DATE: 11/03/2015

DATE: November 3, 2015

In Re:)	
)	
-----)	ISCR Case No. 14-03112
)	
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 December 4, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence), Guideline C (Foreign Preference) and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On July 31, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez 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 by amending the SOR; whether the evidence raised security concerns; and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable finding under Guideline C is not at issue in this appeal. The Guideline F concerns were withdrawn at the start of the hearing, as was one allegation each under Guidelines B and C. Consistent with the following, we affirm.

The Judge’s Findings of Fact

The Judge made the following findings pertinent to the issues raised on appeal. Applicant was born in Pakistan, where he was educated at a military academy. Following graduation, he served as a commissioned officer in the Pakistani military, holding the equivalent of a top secret clearance. He retired early, immigrating to the U.S. His mother and one of his siblings were living in this country at that time. Due to his military service, Applicant was entitled to land in Pakistan, free medical care, and a pension. He relinquished his entitlement to land, and he and his family have never used the medical services. His military identification card has expired. Applicant receives a small pension from the Pakistani government, worth about \$1,200 a year. Applicant has a sibling-in-law who is a citizen of Pakistan. This person’s spouse is a senior official in the Pakistani military.

Pakistan is a parliamentary federal republic, an ally of the U.S. in the war against terrorism. On the other hand, Pakistan’s intelligence agency appears to support an organization that the U.S. has designated as terrorist. Terrorist and other extremist groups operate within that country, and they have carried out attacks against the U.S. The Pakistani government has committed human rights violations, and it is plagued by corruption.

The Judge’s Analysis

The Judge resolved the remaining Guideline C allegation in Applicant’s favor. He also entered favorable findings under all but three of the concerns alleged under Guideline B.

The three allegations that were decided against Applicant pertained to his Pakistani military service; his sibling-in-law and that person’s military spouse; and his wife’s inheritance. The Judge cited to evidence that Applicant had held a Pakistani security clearance while in the military, which, he concluded, posed a conflict of interest with the duties expected of someone who has access to U.S.-protected information. He also concluded that Applicant’s ties and loyalties within the U.S. are not sufficient to mitigate concerns that his in-laws might be a means through which he could be

subjected to pressure or coercion. The Judge explicitly noted, however, that he was not finding Applicant to be lacking in patriotism. He also concluded that Applicant's "sizeable financial interest" in the future inheritance could become a lever by which foreign interests antithetical to the U.S., that operate freely in Pakistan, could attempt to influence him. Though citing Applicant's honesty and full cooperation during the clearance process, the Judge stated that even good people can become security risks due to circumstances outside their control.

Discussion

Applicant notes that toward the end of the hearing, Department Counsel moved to amend the SOR to add the allegations about the in-laws and the inheritance. Insofar as he had objected to the amendment when it was proposed (Tr. at 79), we interpret his argument as a challenge to the Judge's decision to grant this motion. We review a Judge's decision to amend an SOR for an abuse of discretion. *See, e.g.*, ISCR Case No. 14-00019 at 4 (App. Bd. Sep. 18, 2014).

The Directive states the following:

The SOR may be amended at the hearing by the Administrative Judge on his or her own motion, or upon motion by Department Counsel or the applicant, so as to render it in conformity with the evidence admitted or for other good cause. When such amendments are made, the Administrative Judge may grant either party's request for such additional time as the Administrative Judge may deem appropriate for further preparation or other good cause. ¶ E3.1.17.

In the case before us, evidence about Applicant's in-laws and inheritance was educed during the course of Applicant's testimony, none of it having been alleged in the SOR. Accordingly, it was consistent with the Directive for Department Counsel to move to amend the SOR in order that it would conform to the evidence. Moreover, the Judge gave Applicant more than a month following the hearing to submit additional matters to address these new allegations. Tr. at 81. The Judge's decision to grant Department Counsel's motion was consistent with the provisions of the Directive. This decision was not an abuse of discretion.

Applicant argues that his in-laws are not people of bad character or the kind who would act against the interests of the U.S. He also argues that his military service to Pakistan was honorable and in no way an indication that he would harm the U.S. We construe this argument as a challenge to the Judge's conclusion that evidence of these matters raised concerns under Guideline B. The Directive presumes a nexus between admitted or proven conduct or circumstances under any of the Guidelines and an applicant's eligibility for a clearance. *See, e.g.*, ISCR Case No. 14-04648 at 3 (App. Bd. Sep. 9, 2015).

In this case, Applicant's admissions to the SOR, along with the evidence contained in the security clearance application and elicited during testimony, are sufficient to establish the factual basis

of the Guideline B concerns at issue here. Applicant states that his service was honorable and that his in-laws themselves are not engaged in activity antithetical to U.S. interests.¹ However, Department Counsel is not required to prove an actual threat of espionage. To the contrary, factors such as an applicant's relatives' obscurity or the failure of foreign authorities to contact those relatives in the past do not provide a meaningful measure of whether an applicant's circumstances pose a security risk. ISCR Case No. 07-18283 at 4 (App. Bd. Apr. 24, 2009). It is the nature of the foreign ties themselves that give rise to a security concern. An applicant's ties, either directly or through a family member, to persons of high rank in a foreign military (such as his in-law), are of concern because it is foreseeable that through such an association the applicant could come to the attention of those interested in acquiring U.S.-protected information. *See, e.g.*, ISCR Case No. 11-12623 at 5 (App. Bd. Feb. 2, 2015), in which the applicant's security-significant circumstances included a sister-in-law married to a retired high-ranking official in the Russian army. In addition, the Judge's conclusion that Applicant's having served in a foreign military and having held a foreign security clearance pose a danger of a conflict of interest is supportable under the facts of this case. *See, e.g.*, ISCR Case No. 10-00824 at 4 (App. Bd. Aug. 6, 2012) (Prior involvement with a foreign defense establishment or prior access to sensitive foreign military projects raises "significant questions that require scrutiny in evaluating an applicant's security eligibility.") (internal citation omitted) After considering the record evidence as a whole, we find no reason to disturb the Judge's conclusion that Applicant's foreign connections and possible foreign financial interest raise security concerns under Guideline B.²

Applicant cites to his substantial favorable evidence concerning his ties within the U.S. He also emphasizes that he is loyal to this country. The Judge's extensive findings of fact address the evidence that Applicant has cited. Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 12-08412 at 2 (App. Bd. Sep. 11, 2015). Applicant's argument consists, in effect, of an alternative interpretation of the record, which is not 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. 14-05251 at 3-4 (App. Bd. Oct. 5, 2015). We note Applicant's statement to the effect that he has lost job opportunities due to the Judge's decision. However, the Directive does not permit us to consider the impact of an adverse determination. *See, e.g.*, ISCR Case No. 14-02041 at 3 (App. Bd. Aug. 17, 2015).

Regarding Applicant's argument about his ties to and within the U.S., neither the Judge nor the Appeal Board are concluding or assuming that Applicant is lacking in character or loyalty to this country. The Directive is clear that an adverse determination is a determination in terms of national security and is in no sense a conclusion about the applicant's loyalty. Directive, Enclosure 1,

¹Applicant also notes that the security clearance application did not inquire about siblings-in-law. He argues that such persons are not of security significance. However, "In-laws represent a class of persons who are contemplated by the Directive as presenting a potential security risk. As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 12-00084 at 3 (App. Bd. May 22, 2014). Applicant's evidence and testimony are not sufficient to rebut this presumption.

²*See* Directive, Enclosure 2 ¶ 7(e): "a substantial . . . financial, or property interest in a foreign country . . . which could subject the individual to heightened risk fo foreign influence or exploitation[.]"

SECTION 7. *See* ISCR Case No. 12-08412 at 2 (App. Bd. Sep. 11, 2015). Moreover, a “clearance does not equate with passing judgment upon an individual’s character. Instead, it is only an attempt to predict his possible future behavior and to assess whether, under the compulsion of circumstances or for other reasons, he might compromise sensitive information.” *Hill v. Dept. of the Air Force*, 844 F. 2d 1407 at 1409 (10th Cir. 1988). Even a person of the highest character can experience circumstances under which he could be tempted to place the well-being of foreign relatives over the interests of the U.S., and this is the context in which the Judge made his adverse decision.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. In addition to the matters discussed above about Applicant’s military service, foreign in-laws, and foreign financial interests, the nature of the foreign government and the presence of terrorist activity are important considerations, as is Pakistan’s human rights record. *See, e.g.,* ISCR Case No. 05-03250 at 4-5 (App. Bd. Apr. 6, 2007). 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, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra’anan
Michael Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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

