KEYWORD: Guideline B

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the record evidence. Other Hearing Office cases may be considered as persuasive authority, but they are not binding either on other Hearing Office Judges or on the Appeal Board. Adverse decision affirmed.

CASE NO: 09-08417.a1

DATE: 04/04/2011

DATE: April 4, 2011

In Re:	)	
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	)	
	)	
Applicant for Security Clearance	)	
	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 21, 2010, DOHA 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 February 8, 2011, after the hearing, Administrative Judge Michael H. Leonard denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the judge's decision denying Applicant a security clearance is arbitrary, capricious, or contrary to law. Specifically, Applicant

contends that he has mitigated the Government's security concerns under Guideline B, and he cites two Hearing Office decisions in support of his position. Consistent with the following discussion, we affirm the Judge's decision.

The Judge made the following relevant factual findings: Applicant was born in China, but completed high school and college in the United States. Applicant became an American citizen while he was in college. Applicant's spouse is a citizen of China. They married in China, and she immigrated to the United States later. Applicant's spouse is a lawful U.S. resident alien, and she intends to apply for U.S. citizenship as soon as she is allowed to apply. They have one child, who was born in the United States. Applicant's father, mother, brother, and sister were born in China. All now reside in the United States, and his mother has become a U.S. citizen. Applicant's mother-in-law and father-in-law are citizens and residents of China. Applicant made five trips to China between 2005 and 2007–first to marry his wife and then to visit her before she joined him in the United States. Neither Applicant nor his wife has business, financial, or property interests in China. Applicant submitted ten highly favorable letters of recommendation.

Applicant argues that he has mitigated the government's security concerns under Guideline B and that the Judge either did not consider or did not give adequate weight to his evidence of mitigation. Among other factors which he considers to be significant as mitigation, Applicant refers to a statement in the government's exhibits regarding China that China is helping the United States fight terrorism. There is a rebuttable presumption that the Judge considered all the record evidence unless the Judge specifically states otherwise; and there is no requirement that the Judge mention or discuss every piece of record evidence when reaching a decision. *See, e.g.,* ISCR Case No. 07-18303 at 2 (App. Bd. Nov. 13, 2008). Applicant has not rebutted the presumption that the Judge considered that evidence in his decision.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to mitigate those concerns. Directive ¶ E3.1.15. Applicant argues that he presented enough mitigating evidence that the Judge should have granted him a clearance. The Judge found some evidence of mitigation. However, that alone did not compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable, or *vice versa.* A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 07-05809 at 2 (App. Bd. May 27, 2008).

In support of his appeal, Applicant cites decisions by two other Hearing Office Judges which he believes are similar to his case and in which the Judge granted the applicant a clearance. While decisions by Hearing Office Judges in other cases may be cited as persuasive authority, those cases are not binding legal precedent which a Hearing Office Judge must follow in another situation. Applicant's reliance on other Hearing Office decisions does not demonstrate that the Judge erred in this case. *See, e.g.,* ISCR Case No. 08-03845 at 2 (App. Bd. Feb. 24, 2009).

After reviewing the record as a whole, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his 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, 158 (1962)). "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). Accordingly, the Judge's ultimate unfavorable security clearance decision is sustainable.

Order

The Judge's decision denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board