

KEYWORD: Guideline B

DIGEST: To the extent the Department Counsel's arguments rely on case law interpreting language from adjudicative guidelines which are no longer in effect, those arguments are not persuasive. The Judge did not confine his consideration to coercive means of influence. Favorable decision affirmed.

CASENO: 07-15696.a1

DATE: 02/20/2009

DATE: February 20, 2009

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In Re: )  
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 ----- ) ISCR Case No. 07-15696  
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 Applicant for Security Clearance )  
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esq., Department Counsel

**FOR APPLICANT**

Ronald C. Sykstus, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security

clearance. On March 16, 2008, 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 November 5, 2008, after the hearing, Administrative Judge Paul J. Mason granted Applicant’s request for a security clearance. Department Counsel filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issues on appeal: whether the Judge’s favorable decision under Guideline B is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

To the extent Department Counsel’s arguments on appeal rely on case law interpreting language from adjudicative guidelines which are no longer in effect, those arguments are not persuasive. (For additional discussion on this point see ISCR 06-17838 at p. 4 (App. Bd. Jan. 28, 2008).

Department Counsel is correct that the Government’s security concerns are broader than the limited possibility of the use of coercive means of influence. However, a review of the Judge’s decision leads the Board to conclude that the Judge did not confine his consideration to coercive means of influence. The Judge’s decision contains a satisfactory explanation for [his] conclusions, including a rational connection between the facts found and his ultimate decision, both as to the application of the mitigating conditions and the whole-person analysis. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). Given the record that was before him, the Judge’s application of Foreign Influence Mitigating Conditions 8(a) and 8(b) and his whole person analysis of Applicant’s case are sustainable. “The Board need not agree with a Judge’s decision in order to find it sustainable.” ISCR Case No. 06-23881 at 2 (App. Bd. November 2, 2007).

### **Order**

The Judge’s favorable security clearance decision is AFFIRMED.

Signed: Michael Y. Ra’anan  
Michael Y. Ra’anan  
Administrative Judge  
Chairman, 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