

KEYWORD: Guideline B; Guideline F; Guideline E

DIGEST: Claims of error must be raised with specificity. Applicant failed to do so. The Judge failed to consider evidence that Applicant had complied with security procedures in high-risk circumstances. However, this error did not affect the overall outcome of the case and, therefore, was harmless. Adverse decision affirmed.

CASE NO: 12-09326

DATE: 06/18/2013

DATE: June 18, 2013

In Re:)	
)	
-----)	ISCR Case No. 12-09326
)	
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 September 28, 2012, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence), Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested that the case be decided on the written record. On April 4, 2013, after considering the record, Defense Office of Hearings and Appeals Administrative Judge Martine H. Mogul denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse clearance decision is arbitrary, capricious or contrary to law.

Applicant's appeal brief contains new evidence, in the form of several documentary exhibits, and a detailed narrative statement elaborating upon the information which Applicant provided in response to the government's File of Relevant Material (FORM). Applicant states that she is presenting her case again in order to explain herself better. Applicant's Brief at 2. The Board cannot consider this new evidence on appeal. *See* Directive ¶ E3.1.29. The Appeal Board's authority to review a case is limited to cases in which the appealing party has alleged the Judge committed harmful error.

There is no presumption of error below, and the appealing party has the burden of raising and demonstrating factual and legal error by the Judge. Such claims of error must be made with specificity. *See, e.g.*, ISCR Case No. 10-06437 at 3 (App. Bd. Mar. 11, 2013). In her brief, Applicant makes the general assertion that the Judge's decision is unjust and a complete mischaracterization of her true character. Applicant's Brief at 2. Applicant's blanket assertion in this regard lacks the requisite specificity. *Id.*

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. The presence of some mitigating evidence does not alone 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 evidence, 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. 11-00982 at 2 (App. Bd. Jun. 12, 2012).

The Board has previously noted that, as a general rule, an applicant's prior history of complying with security procedures and regulations is considered to be of relatively low probative value for the purpose of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct. However, the Board has also recognized that history may be accorded greater weight in cases where the security concern is not a result of Applicant's conduct, such as in Guideline B cases, and the applicant has established by credible, independent evidence that compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. *See, e.g.*, ISCR Case No. 06-25928 at 4 (Apr. 9, 2008); ISCR Case No. 10-02803 at 6 (App. Bd. Mar. 19, 2012). That type of evidence was present in this case, and the Judge should have analyzed the Guideline B security concerns more fully in the context of that evidence. But remand of the case for such analysis would not change the ultimate outcome, given the Judge's sustainable adverse findings under Guidelines F and E.

The Board does not review a case *de novo*. After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his decision.

“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). Therefore, the Judge’s unfavorable security clearance decision is sustainable.

Order

The decision of the Judge is AFFIRMED.

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

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

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