

KEYWORD: Guideline B; Guideline E

DIGEST: The Judge’s findings about the inconsistencies in Applicant’s statements regarding his foreign contacts are supported by the evidence. Considering this evidence, along with Applicant’s SOR admissions, a reasonable person could believe that Applicant’s failure to disclose these persons in his current SCA was deliberate. Adverse decision affirmed.

CASENO: 13-00633.a1

DATE: 07/17/2014

DATE: July 17, 2014

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**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 17, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline E

(Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On April 10, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Martin H. Mogul, 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's findings of fact contained errors and whether the Judge's decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Born in Afghanistan, Applicant came to the U.S. in the late 1970s. He became a naturalized U.S. citizen in the mid-1980s. Applicant was educated at a university in Afghanistan and served in the Afghan military. He received graduate degrees from universities in the U.S. He identified himself as a self-employed professor of a university from the late 1970s until recently.

Applicant's SCA alleged under Guideline B that he had contact with three named individuals from Afghanistan. Applicant denied the first of the allegations but admitted the other two. The first allegation concerned a high-level official in the Afghan government. Applicant had disclosed his knowledge of this person in his 2012 clearance interview, stating that he had met this person once and had never heard back. However, in a security clearance application (SCA) completed in 2010, he stated that he had known this person since the late 1960s and has had one to two contacts with him per year.

Regarding the second Guideline B allegation, Applicant had disclosed during his clearance interview that he had an uncle who was a high-ranking official in the Afghan military. He stated that he had met with his uncle in the early 2000s but did not hear back from him. However, in his 2010 SCA, he stated that he had known his uncle for several decades and had contact with him about 15 times a year. In another security screening document, he stated that he had three to four contacts with this person per year.

Finally, in his 2010 SCA, Applicant had disclosed an aunt who was a citizen and resident of Afghanistan. In that SCA he stated that he had known her from the early 1970s and had more than 15 contacts with her per year. In a security screening document, he admitted to six contacts with this person per year.

In his 2013 SCA, that forms the basis of the current adjudication, Applicant was asked if he had any close and/or continuing contacts with a foreign national within the previous seven years with whom he was bound by affection, influence, common interests, and /or obligations. He answered "no," failing to disclose the foreign official, his uncle, and his aunt. In his response to the SOR, Applicant denied this allegation. He stated that he had experienced only one contact each with the government official and with his aunt and that he had been in contact with his uncle only once since the mid-1970s. The Judge found that this SOR response was "completely contradicted" by prior representations Applicant had made regarding these individuals.

Afghanistan's human rights record remains poor, the Taliban having become increasingly sophisticated and destabilizing. All U.S. citizens are in danger in Afghanistan, as no part of that country is immune from violence.

### **The Judge's Analysis**

In evaluating Applicant's case for mitigation, the Judge stated that Applicant's continuing relationship with his uncle and aunt raised the possibility of a conflict between Applicant's ties to them and his duty to protect national security. Regarding the allegation of falsification, the Judge stated that Applicant's changing representations about the extent of his contacts with the individuals discussed above, and his complete failure to disclose his uncle and aunt on his current SCA, evidenced an intent to mislead the Government about his foreign contacts. The Judge stated that, given this finding, he could not conclude that Applicant had the judgment and honesty necessary to protect national security.

### **Discussion**

Applicant has challenged the Judge's findings of fact. He denies that he deliberately falsified his SCA. He also argues that certain other of the Judge's findings were erroneous, for example findings that Applicant interprets to mean that he had used a foreign passport and that he had been self-employed, contending instead that he had been employed by several colleges and universities during the time in question. He also challenges the Judge's findings about the extent of his contact with the high-ranking government official. We examine a Judge's findings to see if they are supported by substantial record evidence. That is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See also* ISCR Case No. 11-13948 at 3 (App. Bd. Feb. 26, 2014).

We have examined the Judge's findings in light of the record as a whole. The Judge's findings about the inconsistencies in Applicant's statements regarding his foreign contacts are supported by the evidence. Considering this evidence, along with Applicant's SOR admissions, a reasonable person could believe that Applicant's failure to disclose these persons in his current SCA was deliberate. The remaining challenged findings are likewise based upon substantial evidence or are otherwise of no significance. We note that the Judge made no findings at all about Applicant's purported use of a passport and never mentioned it in his Analysis. Moreover, the challenged finding about Applicant's self-employment came from the explicit language of Applicant's current SCA. Even if this finding was erroneous, the Judge did not address it in his Analysis, and there is no reason to believe that the nature of Applicant's prior employment had any bearing upon the outcome of the case. Applicant has cited to no harmful error in the Judge's findings.

Applicant contends that the Judge failed to consider his explanations for his inconsistent statements. He also argues that the Judge failed to consider other favorable evidence, such as his communications with prominent people in an effort to support the U.S. mission in Afghanistan. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-03948, *supra*, at 3. A Judge's task includes resolving conflicts in the evidence. *See, e.g.*, ISCR Case No. 11-00180 at 3 (App. Bd. Jun. 19, 2012). Under the facts of this case, the Judge's

conclusion that Applicant's inconsistent statements undermined his credibility is supportable. We are required to give deference to a Judge's credibility determination. Directive ¶ E3.1.32.1. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, either regarding his inconsistent statements or the other matters addressed in his brief. Moreover, he has not provided a reason to conclude that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law.

Applicant contends that the investigation of his case was faulty and that he never should have been issued an SOR. DOHA has no authority to adjudicate the adequacy of a background investigation. *See, e.g.*, ISCR Case No. 02-07191 at 3 (App. Bd. Mar. 25, 2004).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. 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'an  
Michael Ra'an  
Administrative Judge  
Chairperson, Appeal Board

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

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