

KEYWORD: Guideline B

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the evidence in the record. Disagreement with the Judge’s weighing of the evidence is not enough to show that the Judge mis-weighed the evidence. Hearing Office decisions are not binding on other Hearing Office Judges or on the Appeal Board. Adverse decision affirmed.

CASE NO: 13-01297.a1

DATE: 03/09/2015

DATE: March 9, 2015

In Re:)	
)	
-----)	ISCR Case No. 13-01297
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 20, 2014, DoD 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 decision on the written record. On December 11, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Thomas M. Crean denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's findings of Fact

Applicant is employed by a Defense contractor, in support of U.S. military objectives overseas. He was born in Iran, coming to the U.S. in the mid-1980s and becoming a U.S. citizen in the early 1990s. He is married to a U.S. citizen. He has performed duties twice previously in overseas locations on behalf of U.S. military objectives.

Applicant has five siblings, and three siblings-in-law, who are citizens and residents of Iran. Applicant contacts them three or four times a year by phone. He has another sibling who is a citizen of Iran but a resident of a third country. He contacts this sibling about four times a year. Applicant has a niece and a nephew who are citizens and residents of Iran. His parents are deceased.

As a young adult, Applicant worked part time under the direction of an agency of the Iranian government. Applicant enjoys a good reputation for his work ethic, enthusiasm, and humility. One of Applicant's character references, a senior officer in the U.S. military, describes him as trustworthy and reliable.

Iran has been hostile to the U.S. since the 1979 revolution. It supports international terrorist groups. It has pursued weapons of mass destruction and is possibly attempting to build a nuclear weapon. Iran is known to conduct intelligence operations and economic espionage against the U.S. Iran is a nation whose interests are inimical to the U.S.

The Judge's Analysis

The Judge concluded that Applicant's connections in Iran raised security concerns. He also concluded that none of the mitigating conditions were applicable. He noted Applicant's contact with his siblings, which he described as neither casual nor infrequent. He stated that, despite Applicant's ties to the U.S., his family members in Iran could place him in a position of having to choose between their interests and those of U.S. security. In the whole-person analysis, the Judge noted Applicant's service under dangerous circumstances. However, Applicant's family circumstances and the nature of the Iranian regime left the Judge with doubts that had to be resolved in favor of national security.

Discussion

Applicant cites to favorable evidence that, he argues, the Judge failed to consider. This evidence includes his character references, his service to the U.S. overseas, and his expressions of loyalty to the U.S. The Judge discussed this evidence in his Analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-00281 at 4 (App. Bd. Dec. 30, 2014). Applicant's brief consists, in essence, of a

disagreement with the Judge’s weighing of the evidence. This argument is not sufficient 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. 14-00976 at 2-3 (App. Bd. Feb. 5, 2015). Applicant has cited to some Hearing Office cases in support of his appeal. We give these cases due consideration. However, they have significant factual differences from Applicant’s, for example concerning the foreign country at issue and the nature of the family relationships involved. In any event, Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g., Id.* at 3.

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). “[A clearance denial] may be based upon concerns completely unrelated to conduct, such as having close relatives residing in a country hostile to the United States.” *Id.* at 528-9. *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: Jeffrey D. Billett
Jeffrey D. Billett
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