

KEYWORD: Guideline B

DIGEST: The Directive presumes a nexus between admitted or proven conduct or circumstances under any guideline and an applicant's security eligibility. Adverse decision affirmed

CASENO: 14-04993.a1

DATE: 07/10/2015

DATE: July 10, 2015

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In Re:)	
)	
-----)	ISCR Case No. 14-04993
)	
)	
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 November 3, 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 hearing. On April 23, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Richard A. Cefola denied Applicant’s request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

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

The Judge made the following findings: Applicant is 46 years old. He was born in India and came to the United States at the age of 28. He became a U.S. citizen in 2008. Applicant’s mother and father are citizens and residents of India. His father worked for a state government, but is now retired and gets a Social Security type pension from the Indian government. Applicant’s brother is a citizen and resident of India. Applicant’s two sisters are citizens and residents of India. Applicant also has several in-laws who are citizens and residents of India, one of whom works for the national railroad. Applicant has two bank accounts in India worth about \$8,000. He uses one account to help his parents and sister-in-law and the other account to support a condo. The condo is under construction in India and is worth about \$60,000. The value of the condo under construction pales in comparison to his \$600,000 net worth in the United States.

In 2008, India was reported as involved in criminal espionage and U.S. export controls enforcement cases. In a 2009-2011 report, Congress noted India as targeting sensitive U.S. economic information and technology. There have been numerous, recent criminal cases concerning export enforcement, economic espionage, theft of trade secrets, and embargo-related criminal prosecutions involving both the government of India, and private companies and individuals in India.

The Judge concluded: Any concerns about Applicant’s real property interests in India are mitigated by the fact that the value of Applicant’s U.S. assets is about ten times the value of the assets he holds in India. However, in light of Applicant’s close and continuing family connections in India, the case is found against Applicant under the Foreign Influence Guideline.

Applicant argues that the decision is unfair based on the fact that his family members are citizens of India and that he is providing direct financial support to them when needed. He states that he is a responsible father, employee, and citizen of the U.S. and would do no wrong against this country. He states that he has never participated in any wrongdoing, and he intends to make his

future in the U.S., the country to which he is loyal.¹ Applicant fails to establish error on the part of the Judge.

Applicant's arguments amount to a general assertion that the record does not raise concerns under Guideline B. We note that the Directive presumes a nexus, or rational connection, between admitted or proven conduct or circumstances under any of the Guidelines and an applicant's eligibility for a clearance. *See, e.g.*, ISCR Case No. 11-10255 at 4 (App. Bd. Jul. 28, 2014). In the case before us, Applicant admitted all of the SOR allegations and the Government produced substantial evidence of the allegations as well. Applicant's argument is not sufficient to rebut the presumption of nexus. Given the totality of Applicant's circumstances, we find no reason to disturb the Judge's ultimate conclusion that the Government's security concerns were not mitigated.

In support of his appeal, Applicant cites to decisions by the Hearing Office, which he argues support his request for a favorable determination. The Board gives due consideration to these cases. However, each case must be decided on its own merits and Hearing Office decisions are binding neither on other Hearing Office Judges nor the Board. *See* ISCR Case No. 06-24121 at 2 (App. Bd. Feb. 5, 2008). Nothing contained in the decisions cited by Applicant establish that the Judge in this case committed error.

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the 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, 168 (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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge is AFFIRMED.

Signed: Michael Ra'an

Michael Ra'an
Administrative Judge

¹Applicant devotes a section of his brief to his real property interests in India, and indicates that if those property interests are the main reason for not granting him a clearance, he would be willing to divest himself of those holdings. The Judge found the concern raised by Applicant's property interests in India mitigated by the extent of his holdings in the U.S.

Chairperson, 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