

DATE: April 24, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19107

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 25, 2004, DOHA issued a statement of reasons 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 hearing. On September 28, 2005, after the hearing, Administrative Judge Philip S. Howe denied Applicant's request for a security clearance. ⁽¹⁾ Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Administrative Judge erred in making certain factual findings and whether the Administrative Judge erred in concluding that the security concerns raised under Guideline B had not been mitigated.

Applicant argues that the Administrative Judge erred in finding that: (1) Applicant works for a defense contractor as a "chemical engineer," (2) Applicant's parents were "victims of the Cultural Revolution," (3) "there is a U.S. Consulate [in Applicant's home province]," and (4) Applicant "admits she would travel to the PRC to visit [her parents] if not for security concerns." Applicant's arguments have mixed merit. There is insufficient record evidence to support the first three findings. However, the fourth finding is reasonably supported by record evidence. ⁽²⁾

Applicant argues that the evidence she provided in the proceeding below was sufficient to require the Administrative Judge to conclude, as a matter of law, that she had rebutted, mitigated or extenuated the security concerns raised by the Guideline B (Foreign Influence) allegations. The Board does not find this argument persuasive.

The Administrative Judge made sustainable findings that: (1) Applicant has parents and a brother who are citizens of the People's Republic of China (China), residing in China, (2) Applicant had traveled to China in 2002 and 2004, and (3) Applicant maintains monthly telephone contact with her parents. Given those findings, the Administrative Judge concluded that Applicant's ties with those immediate family members raised security concerns under Guideline B and that Foreign Influence Disqualifying Conditions 1 and 6 applied. The Judge's conclusion shifted the burden of persuasion to Applicant. Where there are admitted or proven facts and circumstances that raise security concerns, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a

favorable clearance decision." Directive ¶ E3.1.15.

Applicant argues that her contacts with her parents are casual and infrequent, and that the Administrative Judge gave insufficient weight to evidence that Applicant has excellent character, professional and employment references. She also argues that there are many Hearing Office decisions in which an applicant in ostensibly similar circumstances was granted a clearance.

There is a rebuttable presumption that contacts with immediate family members are not casual. *See, e.g.*, ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Given the record in this case, Applicant's arguments do not demonstrate that it was arbitrary, capricious, or contrary to law for the Administrative Judge to conclude that Applicant had not met her burden of establishing that her contacts with her parents were casual and infrequent.

Likewise, Applicant's arguments do not demonstrate that it was arbitrary, capricious, or contrary to law for the Judge to conclude that Applicant had not met her burden of establishing that her relatives were not in a position to be exploited by a foreign power in a way that could force her to choose between loyalty to those relatives and the United States. Mere disagreement with the Judge's weighing of the evidence is not sufficient to demonstrate error without a showing that the Judge's weighing of the evidence was arbitrary, capricious, or contrary to law.

There is a rebuttable presumption that an Administrative Judge considered all the record evidence unless he or she specifically states otherwise. *See, e.g.*, ISCR Case No. 99-9020 at 2 (App. Bd. Jun. 4, 2001). Applicant's ability to cite to record evidence that she contends should have been given greater weight is not sufficient to overcome that rebuttable presumption in this case.⁽³⁾ Merely because a Judge does not give greater weight to record evidence cited by the appealing party, it does not follow that the Judge simply ignored that evidence. Moreover, to the extent Applicant's argument can be construed as challenging the Judge's weighing of the record evidence, it fails to establish that the Judge weighed the record evidence in a manner that is arbitrary, capricious, or contrary to law.

Lastly, the decision in another DOHA Hearing Office case does not demonstrate error by the Judge in this case. A decision by a Hearing Office Judge is not legally binding precedent on that Judge's colleagues in other cases and such cases are not legally binding precedent on the Board. *See* ISCR Case No. 01-22606 at 3-5 (App. Bd. Jun. 30, 2003).

Applicant has demonstrated error with respect to three of the Judge's findings, but the errors are not sufficient individually or cumulatively to warrant reversal. The Judge's sustainable findings are sufficient to support his ultimate adverse security clearance determination and it is unlikely that remand would produce a different result.

Order

The decision of the Administrative Judge denying Applicant a clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Chairman (Acting), Appeal Board

Signed: Christine M. Kopocis

Christine M. Kopocis

Administrative Judge

Member, Appeal Board

Signed William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

1. The Administrative Judge found in Applicant's favor with respect to Guideline E. That favorable finding is not at issue on appeal.
2. Transcript at 137.
3. In this case, the Judge specifically noted that: "Applicant submitted 26 character reference letters attesting to her good work ethic and hard work. She submitted her employee performance reports showing her high ratings by her supervisors. Testimony from her graduate school professors, supervisors, and others demonstrated her dedication to her profession and her academic intelligence." Decision at 4.