

DATE: July 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04004

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 March 31, 2005, DOHA 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 December 30, 2005, after the hearing, Administrative Judge Arthur E. Marshall, Jr. denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Administrative Judge's unfavorable clearance decision under Guideline B is arbitrary, capricious or contrary to law. [\(1\)](#)

Applicant contends that the Administrative Judge's unfavorable clearance decision should be reversed because it is Applicant's husband's family members, not her family members, that are citizens and residents of Yemen. Applicant also argues that her evidence was sufficient, as a matter of law, to mitigate the government's security concerns under the whole person concept. In support of her arguments, Applicant cites to a number of Hearing Office decisions in which applicants with ostensibly similar cases were granted clearances. The Board does not find Applicant's arguments persuasive.

The decisions in other DOHA Hearing Office cases cited by Applicant on appeal do not demonstrate error by the Administrative Judge in this case. A decision by a Hearing Office Judge is not legally binding precedent on that Judge's colleagues in other cases, even if Applicant establishes close factual similarities between the cited cases and the instant case. ISCR Case No. 03-23776 at 3 (App. Bd. Jun. 13, 2006). Likewise, the cited cases are not legally binding precedent on the Board. ISCR Case No. 01-22606 at 3-5 (App. Bd. Jun. 30, 2003).

Applicant had the burden of presenting evidence to rebut, explain, extenuate or mitigate facts that Department Counsel proved or that Applicant admitted regarding her family ties to Yemen, and Applicant also had the ultimate burden of persuasion as to obtaining a favorable security clearance decision. Directive ¶ E3.1.15. The Administrative Judge had to consider the record evidence as a whole, both favorable and unfavorable, evaluate the facts and circumstances of Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide whether Applicant had met her burden of persuasion under Directive ¶ E3.1.15.

There is a rebuttable presumption that the Administrative Judge considered all of the evidence presented. *See, e.g.*, ISCR Case No. 99-9020 at 2 (App. Bd. Jun. 4, 2001). The fact that Applicant's explanations and her mitigating evidence did not lead the Judge to the decision desired by Applicant does not establish error. 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*. An applicant'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.

A review of the Administrative Judge's decision indicates that the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying circumstances, and considered the possible application of relevant mitigating conditions and factors. The Judge found in favor of Applicant with respect to most of the SOR allegations and articulated a rational basis for not favorably applying any mitigating conditions or factors with respect to the remaining allegations. He reasonably explained why the evidence which Applicant had presented in mitigation was insufficient to overcome the government's security concerns. Foreign connections not based on birth can raise security concerns under Guideline B. Therefore, the Judge's decision is not rendered arbitrary, capricious, or contrary to law because Applicant's relationships with Yemen citizens are based on her marriage. *See, e.g.*, ISCR Case No. 02-00305 at 4 (App. Bd. Feb. 12, 2003). Given the record that was before him, the Judge's ultimate unfavorable clearance decision under Guideline B is sustainable.

Finally, as the Administrative Judge noted in his decision, Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

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, Appeal Board

Signed: William S. Fields.

William S. Fields

Administrative Judge

Member, Appeal Board

Signed: Mark W. Harvey

Mark W. Harvey

Administrative Judge

Member, Appeal Board

1. The Administrative Judge found in favor of Applicant under SOR paragraphs 1.a, 1.c, and 1.d. Those favorable findings are not at issue on appeal.