

KEYWORD: Guideline B; Guideline C

DIGEST: The Judge articulated a reasonable concern based on Applicant's close ties to his in-laws in Lebanon and his repeated visits to Lebanon with his spouse and children, considered in the context of the overall political/security profile of that country vis-a-vis the United States. Adverse decision affirmed.

CASENO: 07-05795a1

DATE: 07/15/2008

DATE: July 15, 2008

In Re:)
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 -----) ISCR Case No. 07-05795
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)
 Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Alexander J. Brittin, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 17, 2007, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On April 15, 2008, after the hearing, Administrative Judge LeRoy F. Foreman 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 Judge’s adverse security clearance decision under Guideline B is arbitrary, capricious, or contrary to law.

Applicant argues that the Judge’s adverse clearance decision should be reversed because the Judge did not articulate a nexus between the circumstances alleged in the SOR and Applicant’s security eligibility. He also argues that the Judge gave insufficient weight to the evidence as to Applicant’s strong ties to the United States, his testimony that his allegiances lie exclusively with the United States and protecting classified information, and the fact that his in-laws in Lebanon have no contact with their government. Finally, Applicant argues that the Judge’s overall unfavorable conclusion is inconsistent with other hearing-level decisions in which applicants in ostensibly similar circumstances have been granted clearances.¹ Applicant’s arguments do not demonstrate error on the part of the Judge.

The Directive presumes there is a nexus or rational connection between proven conduct under any of its Guidelines and an applicant’s security eligibility. *See, e.g.*, ISCR Case No. 03-22643 at 7 (App. Bd. Jun. 24, 2005). Direct or objective evidence of nexus is not required. *See, e.g.*, ISCR Case No. 03-18218 at 3 (App. Bd. Oct. 7, 2005).

The Board gives due consideration to the cases cited by Applicant. *See, e.g.*, ISCR Case No. 06-05903 at 3 (App. Bd. Oct. 15, 2007). However, the Board has previously noted that decisions in other hearing-level cases are not legally binding precedent, even if an applicant can establish close factual similarities between those cases and his case. *See, e.g.*, ISCR Case No. 04-04004 at 2 (App. Bd. Jul. 31, 2006). Accordingly, the Judge was not legally obligated to reconcile his decision in this case with decisions in other ostensibly similar cases. *See, e.g.*, ISCR Case No. 02-24752 at 3 (App. Bd. Jul. 31, 2006). “The adjudicative process is the careful weighing of a number of variables known as the whole-person concept.” Directive at ¶ E2.2(a). “Each case must be judged on its own merits . . .” *Id* at ¶ E2.2(b).

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. The presence of some mitigating evidence

¹Applicant also argues that it was error for the Judge to ask Applicant a leading question at the hearing. However, this issue is raised for the first time on appeal, Applicant having made no objection to the question at the hearing. Tr. at 90. Accordingly, the Board need not address it. *See, e.g.*, ISCR Case No. 02-24875 at 2, n.2 (App. Bd. Oct. 12, 2006). *See generally* ISCR Case No. 96-0869 at 2-3 (App. Bd. Sep. 11, 1997) and ISCR Case No. 94-1055 at 2 (App. Bd. May 8, 1996).

does not alone compel the Judge to make a favorable 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*. See, e.g., ISCR Case No. 06-09542 at 2 (App. Bd. Sep. 4, 2007). 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. See, e.g., ISCR Case No. 04-08116 at 2 (App. Bd. Jul. 2, 2007).

A review of the 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 whole-person factors. The Judge found in favor of Applicant under Guideline C and with respect to some of the factual allegations under Guideline B. However, he reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome all the government's security concerns. The Judge's decision exhibits a discerning weighing of a number of variables to reach a common sense determination. Directive ¶ E2.2(c). In some instances, this process led to favorable findings for Applicant. However, the Judge also articulated a reasonable concern that Applicant's circumstances could make him vulnerable to pressure, coercion, exploitation, or duress. Decision at 10. That concern is based on close ties to his in-laws in Lebanon and his repeated visits to Lebanon with his spouse and children, considered in the context of the overall political/security profile of that country *vis-a-vis* the United States. Applicant offers an alternative interpretation of the record evidence. However, that alternative interpretation of the record evidence is insufficient to render the Judge's interpretation arbitrary, capricious or contrary to law. See, e.g., ISCR Case No. 03-19101 at 2 (App. Bd. Oct. 13, 2006). The Judge has articulated a rational explanation for his unfavorable determination under the disqualifying and mitigating factors and the whole-person concept, and there is sufficient record evidence to support that determination—given the standard that required the Judge to err on the side of national security. Directive ¶ E2.2(b).

Order

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

Signed: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board