KEYWORD: Guideline B; Guideline C

DIGEST: Applicant served in the Turkish military in the 1980s and remained on reserve status until 2005 Applicant received Turkish social security retirement. Applicant has several immediate family members and in-laws who are citizens and residents of Turkey. Applicant's children are dual citizens of the U.S. and Turkey. Adverse decision affirmed.

CASENO: 07-07388.a1

DATE: 01/15/2009

DATE: January 15, 2009

In Re:	)	
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Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, 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 24, 2008, 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 the case be decided on the written record. On October 22, 2008, after considering the record, Administrative Judge Joseph Testan 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 is arbitrary, capricious, or contrary to law.

Applicant argues that the Judge's adverse clearance decision should be reversed because (a) certain of the Judge's findings of fact are erroneous, (b) the Judge's conclusions are inconsistent and contain errors, and (c) the Judge misapplied the disqualifying and mitigating conditions. The Board does not find Applicant's argument persuasive.

In support of his argument, Applicant offers new evidence in the form of several letters of support and additional explanations about his circumstances which address a number of concerns noted by the Judge in his decision. The Board may not consider this new evidence on appeal. *See* Directive ¶ E3.1.29. Its submission does not demonstrate error on the part of the Judge. *See, e.g.,* ISCR Case No. 06-00184 at 2 (App. Bd. Jul. 24, 2007).

The Judge made the following pertinent findings of fact:

Applicant is a 52 year old employee of a defense contractor. Applicant was born and raised in Turkey. From 1983 to 1992, he worked at a Turkish university. Sometime after that, he moved to the United States. He became a United States citizen and was issued a United States passport in 2000. He considers himself a dual citizen.

Applicant served on active duty with the Turkish military for approximately 16 months in the early 1980s. From the time of his discharge from active duty until early 2005, he was on reserve status with the Turkish military. For a little less than a year in the mid-1990s, applicant worked for the Turkish government while he was living in the United States. Since 2004, applicant has received about $400.00 per month in social security retirement from the Turkish government. He must maintain his Turkish citizenship in order to continue receiving this payment. In 2000, after he became a United States citizen, and again in 2005, applicant used his Turkish passport to enter and exit Turkey. He returned his Turkish passport to the Turkish government earlier this year.

Applicant's wife, to whom he has been married since 1982, was born in Turkey and is a naturalized United States citizen. They have two children, both of whom are dual citizens of Turkey and the United States. Their oldest child was born in Turkey and became a naturalized U.S. citizen at the same time Applicant and his wife did. His youngest child was born in the United States. Applicant applied for and received Turkish citizenship for this child in the 1990s. Applicant's mother, brother, brother-in-law and his wife, and parents-in-law, are citizens and residents of Turkey.

Applicant speaks to his mother once or twice a month, and communicates with his brother weekly by email and monthly by telephone. He provides financial support to both of them.

Turkey is a constitutional republic with a multi-party parliamentary system and a president with limited powers. It has a population of about 70.5 million and is a member of NATO. United States-Turkish relations focus on areas such as strategic energy cooperation, trade and investment, security ties, regional stability, and the global war on terrorism. Terrorist bombings over the past five years have struck religious, government, government-owned, political, tourist and business targets in a number of locations in Turkey. A variety of leftist or Islamic terrorist groups have targeted U.S. and Western interests as well.

The Board's review of a Judge's findings is limited to determining if they are supported by substantial evidence—such relevant evidence as a reasonable mind might accept as adequate to support such a conclusion in light of all the contrary evidence in the same record. Directive ¶ E3.1.32.1. "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620, (1966).

We have considered the challenged material findings in light of the record and conclude that they are based on substantial evidence. To the extent that there is error in the Judge's findings, we conclude that it is harmless. Applicant has not met his burden of demonstrating that the Judge's material findings with respect to his circumstances of security concern do not reflect a reasonable or plausible interpretation of the record evidence. Considering the record evidence as a whole, the Judge's material findings of security concern are sustainable.

Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance." *See Dorfmont v. Brown,* 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. The application of disqualifying and mitigating conditions and whole person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole. *See, e.g.*, ISCR Case No. 01-14740 at 7 (App. Bd. Jan.15, 2003). Thus, the presence of some mitigating evidence 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*. An applicant's disagreement with the Judge's weighing 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.

Applicant elected to have his case decided upon the written record. As a result, the Judge did not have an opportunity to question Applicant about his concerns and evaluate Applicant's credibility in the context of a hearing. Moreover, Applicant did not submit a response to the government's File of Relevant Material (FORM). Applicant has not met his burden of

demonstrating that the Judge erred in concluding that the Guideline B and Guideline C allegations had not been mitigated. Although Applicant strongly disagrees with the Judge's decision, he has not established that it is arbitrary, capricious, or contrary to law. *See* Directive ¶ E3.1.32.3.

In his decision, the Judge weighed the evidence, and considered the possible application of relevant mitigating factors. He reasonably explained why the mitigating evidence was insufficient to overcome the government's security concerns. The favorable record 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. 06-17714 at 3 (App. Bd. Jul. 3, 2007). The Board does not review a case *de novo*. After reviewing the record, the Board concludes that the Judge examined the relevant evidence and articulated a satisfactory explanation for his decision "including a 'rational connection between the facts found and the choices 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 national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Given the record that was before him, the Judge's ultimate unfavorable clearance decision is sustainable.

Order

The decision of the 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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board