

KEYWORD: Guideline B; Guideline C

DIGEST: Hearing level decisions are not legally binding precedent. Applicant's alternative interpretation of the record is not sufficient to demonstrate error. Adverse decision affirmed.

CASENO: 07-06952.a1

DATE: 04/24/2008

DATE: April 24, 2008

In Re:	)	
	)	
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	)	ISCR Case No. 07-06952
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

James J. McKee, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 25, 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 January 18, 2008, after the hearing, Administrative Judge Carol G. Ricciardello 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 contends that the Judge erred in concluding that the security concerns raised under Guideline B had not been mitigated.<sup>1</sup> In support of that contention, Applicant essentially restates the facts of his case and argues that the Judge did not give adequate weight to the favorable evidence. Based upon the record as a whole, Applicant asserts that the security concerns presented by his ties to Iran were outweighed by his ties to the United States and his favorable character references. Applicant also argues that the Judge's overall unfavorable conclusion is inconsistent with another hearing-level decision in which an applicant in ostensibly similar circumstances had been granted a clearance. Applicant's arguments do not demonstrate error on the part of the Judge.

The Board gives due consideration to the case 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 her decision in this case with her decision in another ostensibly similar case. *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 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 factors. The Judge found in favor of

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<sup>1</sup>The Judge found in favor of Applicant under Guideline C and with respect to SOR paragraph 1(b). Those favorable findings are not at issue on appeal.

Applicant with respect to several of the factual allegations. However, she 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 commonsense 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 create a conflict of interest or be used to influence, manipulate, or pressure him. That concern is based on close family ties in Iran, 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 her 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: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board