

KEYWORD: Guideline B; Guideline C; Guideline E

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the evidence in the record. Adverse decision affirmed.

CASE NO: 12-03779.a1

DATE: 04/09/2013

DATE: April 9, 2013

In Re:)	
)	
-----)	ISCR Case No. 12-03779
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 31, 2012, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence), Guideline C (Foreign Preference), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On January 28, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mary E. Henry denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's Decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guidelines C and E are not at issue in this appeal. Consistent with the following, we affirm the Decision of the Judge.

The Judge's Findings of Fact

Applicant works for a Defense contractor. He has been so employed since mid-2011. He enjoys an excellent reputation for the quality of his work.

Born, raised, and educated in Taiwan, Applicant immigrated to the U.S. in the late 1980s, becoming a citizen of this country in the early 2000s. He holds a Ph.D. from a U.S. university. He has numerous relatives in Taiwan. One of his siblings works for a Taiwanese private employer in the People's Republic of China (PRC), having resided there since the late 1990s. Applicant occasionally communicates with this sibling by e-mail. He assumes this sibling has contact with the PRC government, although he does not know the nature of this contact. Another sibling lives in Taiwan and works in the banking industry. Applicant has frequent contact with this sibling by telephone and through e-mail.

The PRC has active intelligence operations directed at U.S. military and industrial secrets. Taiwan is believed to be an active collector of U.S. economic intelligence and proprietary information.

The Judge's Analysis

The Judge concluded that Applicant's foreign relatives raised Guideline B security concerns. Of those relatives, she concluded that Applicant had not mitigated the concerns arising from the sibling who resides in the PRC and from another living in Taiwan. She noted evidence in the record that the PRC targets American-Chinese citizens in efforts to obtain intelligence, concluding that through such relatives Applicant is vulnerable to pressure. She stated that Applicant could be placed in a position of having to choose between the interests of the U.S. and the interests of foreign governments.

Discussion

Applicant contends that the Judge erred in her application of the mitigating conditions regarding his two siblings. He cites to various pieces of record evidence which, he argues, support his case for a clearance. To the extent that he is arguing that the Judge did not consider all of the evidence in the record, Applicant's argument has not rebutted the presumption that the Judge did so. *See, e.g.*, ISCR No. 11-01618 at 3 (App. Bd. Jan. 24, 2013).

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice 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 Judge’s adverse decision is sustainable on this record. *See, e.g.*, ISCR Case No. 06-17838 at 4 (App. Bd. Jan. 28, 2008). “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

Order

The Decision is **AFFIRMED**.

Signed: Jeffrey D. Billett
Jeffrey D. Billett
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