KEYWORD: Guideline B

DIGEST: The Directive presumes there is a nexus, or rational connection, between proved circumstances under any of its guidelines and an applicant's security eligibility Direct or objective evidence of nexus is not required. In a Guideline B case, Department Counsel is not required to prove a threat of espionage. We have consistently held that factors such as the failure of foreign authorities to contact an applicant's relatives in the past do not provide a meaningful measure of whether an applicant's circumstances pose a security risk. In this case, the Judge considered Applicant's prior involvement with a foreign defense establishment, including his having served in the military and/or having held a foreign security clearance. This was appropriate for him to consider. Adverse decision affirmed.

CASENO: 14-04937.a1

DATE: 12/15/2016

DATE: December 15, 2016

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
Steven A. Cash, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 16, 2014, DoD 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 September 20, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez 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 adverse conclusion was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Israel and the U.S. have a strong relationship, which includes cooperation and support on matters of defense. There have been at least three cases, however, of U.S. Government employees disclosing classified information to Israel or acting as agents for that country. U.S. officials are concerned about industrial espionage from Israel, although Israel denies that it engages in such practices.

Applicant moved to Israel from the Soviet Union when he was in his teens. He lived continuously in Israel for 20 years, coming to the U.S. in the late 2000s with his wife and child. Since moving here, Applicant and his wife have had two additional children. He became a naturalized citizen about five years after immigrating to the U.S. Applicant is willing to relinquish his Israeli citizenship. Applicant's wife is also a naturalized citizen.

While living in Israel, Applicant served three years in the military, in compliance with Israeli law. Afterward he served in the military reserves. Applicant voluntarily disclosed his Israeli military service as well as other foreign connections and contacts. In the 2000s, Applicant worked for a multinational corporation, which included contract work for an Israeli agency. Applicant held the equivalent of a security clearance while working for this company.

Applicant's parents and in-laws are retired. Applicant has frequent contact with his parents. His mother-in-law in seeking permanent resident status in the U.S. Applicant has a sibling in Israel who works for a company with an office in that country. Applicant states that none of his relatives or in-laws have connections with the Israeli government or intelligence services. He has an Israeli bank account with about $1,500 in it. He was unable to gain access to the account when he last tried to access it and he now considers it to be lost. The Judge found credible Applicant's statement that he no longer has an interest in it.

Applicant has a retirement account in Israel, the equivalent of a 401(k) plan. His former employers in Israel contributed money to it and he will be eligible for a monthly pension of about $200 to $300 when he reaches retirement age. Applicant owns real estate in the U.S. worth about $1,000,000, and his retirement account in this country has about $120,000. His wife owns a business in the U.S. He credibly testified that he intends to continue living in the U.S. and to retire here.

The Judge's Analysis

The Judge stated that not all espionage concerns arise from hostile powers and cited to his finding about Israel's possible industrial espionage against the U.S. He concluded that Applicant's familial and other connections within Israel, when read in light of the official notice documents contained in the record, raise a heightened risk of foreign influence. The Judge concluded that Applicant had mitigated concerns arising from the Israeli bank account and his dual-national spouse. However, he entered adverse findings regarding Applicant's other Israeli relatives. He stated that these family connections, viewed in light of Applicant's having served in the Israeli military, worked as a cleared Israeli government contractor, and having recently possessed an Israeli security clearance, outweigh the favorable evidence contained in the record.

Discussion

Applicant challenges the Judge's conclusion that his Israeli connections pose a heightened risk of foreign influence. He states that the Judge made no finding that Israel generally engages in exploitation, pressure, coercion, etc. He also denies that Applicant's circumstances could expose him to a conflict of interest.

The Directive presumes there is a nexus, or rational connection, between proved circumstances under any of its guidelines and an applicant's security eligibility. *See, e.g.*, ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016). Direct or objective evidence of nexus is not required. *See, e.g.,* ISCR Case No. 12-00084 at 3 (App. Bd. May 22, 2014). In a Guideline B case, Department Counsel is not required to prove a threat of espionage. We have consistently held that factors such as the failure of foreign authorities to contact an applicant's relatives in the past do not provide a meaningful measure of whether an applicant's circumstances pose a security risk. *See, e.g.*, ISCR Case No. 14-03112 at 3-4 (App. Bd. Nov. 3, 2015). In this case, the Judge considered Applicant's prior involvement with a foreign defense establishment, including his having served in the military and/or having held a foreign security clearance. This was appropriate for him to consider. *See Id* at 4. That is, there is a rational connection between service in a foreign military and access to a foreign country's national secrets (which imposes a fiduciary relationship with that country) and susceptibility to pressure or persuasion to aid that foreign country at the expense of the U.S. In this case we find no reason to disturb the presumption of nexus.

The Judge's findings about matters (alleged in the SOR or not) concerning Applicant's family ties in Israel and with Israelis, his expectation of an (admittedly small) pension from his Israeli retirement account, his service in the Israeli military, his work for an Israeli contractor, and

his having held an Israeli security clearance were all proper for the Judge to consider in the analysis of Applicant's case in mitigation of a potential heightened risk or conflict of interest, his credibility, and the whole person analysis. Of course, the Judge expressly noted the limitation on considering matters not alleged in the SOR as separate bases for disqualification.

Applicant challenges the Judge's application of the whole-person concept, noting that much of the evidence in the record is favorable. However, a whole-person analysis requires a Judge to examine an applicant's security concerns in light of the entirety of the evidence. Directive ¶ 6.3. *See also* ISCR Case No. 15-00424 at 2-3 (App. Bd. Apr. 20, 2016). We find no reason to conclude that the Judge failed to do so. That he extended greater weight to evidence pointing to a risk of coercion or to a conflict of interest is not a reason to believe that the Judge weighed the adverse evidence in a manner that was arbitrary, capricious, or contrary to law. Indeed, the Judge's analysis explicitly, and properly, acknowledged his duty to resolve close cases in favor of the U.S. *See* 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."

The Directive imposes upon applicants the responsibility to mitigate the concerns raised by the Government's evidence. Directive ¶ E3.1.15. This burden of persuasion requires the applicant to show that a favorable decision is "clearly consistent with the interests of the national security." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Given the evidence cited above, we find no reason to disturb the Judge's whole-person analysis or his conclusion that Applicant had failed to meet his burden of persuasion. The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record.

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board