

KEYWORD: Guideline B

DIGEST: It is within a Judge's discretion to conclude that an applicant has mitigated some of the allegations against him but not others. Adverse decision affirmed.

CASENO: 14-06958.a1

DATE: 10/28/2016

DATE: October 28, 2016

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In Re:)	
)	
----)	ISCR Case No. 14-06958
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 22, 2015, 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 decision on the written record. On August 16, 2016, after considering the record, 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

The Judge made the following findings pertinent to the issue raised on appeal: Applicant works for a Defense contractor. She has held a clearance since 2002. Applicant was born in South Korea and became a naturalized U.S. citizen in the late 1990s. She maintains contact with several relatives in South Korea. She has a cousin whose spouse works for a contractor of the South Korean government. Another relative works for the South Korean government itself. Applicant admitted that, when asked by her relatives, what she does for a living, she provided an answer that could have alerted them to the fact that she holds a security clearance. She also was involved in a security violation in 2013. She had been in charge of a locked, classified filing cabinet. It was discovered that the log pertaining to the cabinet contained an error about the status of a classified document. As a consequence of this infraction, Applicant’s employer changed the combination to the lock and required Applicant to request assistance of another employee whenever she needed access.¹

The Judge’s Analysis

The Judge cleared Applicant regarding allegations about the citizenship status of her mother and children. However, he entered adverse findings regarding an allegation about Applicant’s contact with citizens and residents of South Korea, including the government contractor, and another concerning the employee of the South Korean government. In concluding that Applicant had not mitigated concerns arising from these foreign connections, the Judge cited to evidence of her security violation and her possible lack of discretion in comments about the nature of her job. He stated that a Judge must resolve doubts in favor of national security. Accordingly, he concluded that Applicant had not met her burden of persuasion.

Discussion

Applicant notes that the Judge found Applicant’s evidence sufficient to mitigate some of the concerns raised by the SOR. She contends it was not consistent for the Judge to have entered adverse findings regarding the other ones. We have considered the Judge’s decision in light of the

¹Applicant’s disclosures about her job and her security infraction were not alleged in the SOR. The Judge stated that he was considering them for the limited purpose of evaluating Applicant’s case for mitigation and for performing a whole-person analysis. Decision at 5, Note 8. *See* ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

entirety of the record. His findings and analysis provide a reasonable basis for his ultimate conclusions. It is within a Judge's discretion to conclude that an applicant has mitigated some of the allegations against him but not others. *See, e.g.*, ISCR Case No. 14-03747 at 2 (App. Bd. Nov. 13, 2015). Applicant has cited to Hearing Office cases in support of her effort to maintain her clearance. We give these cases due consideration, but Hearing Office decisions are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g., Id.* at 3.

Applicant's appeal brief consists in large measure of a challenge to the Judge's weighing of the evidence, including evidence about her indiscreet disclosure of the nature of her duties. An ability to argue for a different interpretation of the evidence is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06686 at 2 (App. Bd. Apr. 27, 2016).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. "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: Michael Y. Ra'anan
Michael Y. 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