

KEYWORD: Guideline B; Guideline E

DIGEST: The Judge did not err by concluding that an applicant who shares living quarters with someone in violation of U.S. immigration laws poses a heightened risk of exploitation. Applicant did not rebut the presumption that the Judge considered all of the evidence in the record. Adverse decision affirmed.

CASE NO: 15-00693.a1

DATE: 12/22/2016

DATE: December 22, 2016

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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 Department of Defense (DoD) declined to grant Applicant a security clearance. On August 20, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 30, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein 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**

Applicant has been employed as a Government contractor for over 30 years and has held a clearance the entire time. He cohabits with his girlfriend, who is a citizen of Mexico residing illegally in the U.S. He met her at a party, and they have lived together for over ten years. She has two children, both of whom are natural-born U.S. citizens. Applicant reported his relationship with his girlfriend to his facility security officer (FSO) in 2011 or 2012. The FSO advised Applicant not to marry her because it might affect his clearance. Applicant heeded this advice. He reported this relationship on his 2012 security clearance application.

Applicant's girlfriend has taken no steps to acquire U.S. citizenship. Applicant testified that the only way she could do so would be if they married, but he has refrained from this course of action on the advice of the FSO.

### **The Judge's Analysis**

The Judge concluded that Applicant's cohabitation with a foreign citizen residing illegally in the U.S. posed a heightened risk of foreign pressure of coercion, thereby raising concerns under Guideline B.<sup>1</sup> She further concluded that Applicant's circumstances raised the Guideline E disqualifying condition 16(e): "personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing."<sup>2</sup> In examining Applicant's case for mitigation, the Judge noted Applicant's many years of service to the U.S. and the citizenship of his girlfriend's children. However, she concluded that his relationship with his girlfriend leaves him subject to coercion. She concluded that the record left her with serious doubts about Applicant's eligibility for a security clearance.

### **Discussion**

Applicant states that he has not been shown to have broken a law. He denies that his living arrangement poses a heightened risk of coercion. He cites to his having held a clearance for many years without incident or concern.

Concerning Guideline B, we find no reason to disturb the Judge's conclusion that Applicant's sharing living quarters with someone who is in violation of U.S. immigration laws poses the requisite heightened risk. That is, it is foreseeable that this relationship is one that could be

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<sup>1</sup>Directive, Enclosure 2 ¶ 7(d).

<sup>2</sup>Directive, Enclosure 2 ¶ 16(e).

exploited by those interested in acquiring U.S. classified information, should it come to their attention. The Directive presumes a nexus between admitted or proved conduct under any of the Guidelines and an applicant's eligibility for a clearance. *See, e.g.*, ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016). The record, viewed as a whole, supports the Judge's conclusion. Moreover, Applicant's citation to favorable evidence is not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-05795 at 2 (App. Bd. Apr. 26, 2016).

The Judge examined the relevant evidence 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

### **SEPARATE OPINION OF ADMINISTRATIVE JUDGE JAMES F. DUFFY**

I agree with the unfavorable clearance decision, but for reasons that are not addressed in either the Judge's decision or by my colleagues. In finding against Applicant under Guidelines B and E, the Judge applied disqualifying condition 7(d) that requires a finding of "heightened risk of foreign inducement, manipulation, pressure or coercion" and disqualifying condition 16(e) that requires a finding of "conduct that creates a vulnerability to exploitation, manipulation, or duress." Applicant disclosed his relationship with his girlfriend to his FSO in 2011 or 2012 and again on his security clearance application in 2012. Because Applicant has disclosed this relationship to his

company and the Federal Government, the risk of him being manipulated due to the existence of that relationship is minimal. Of note, however, the Appeal Board has previously affirmed an unfavorable clearance decision that involved an applicant who was married to an illegal alien from Mexico. *See*, ISCR Case No. 07-07645 at 4 (App. Bd. Mar. 25, 2009). In that earlier case, the Judge applied disqualifying condition 16(g) (*i.e.*, association with persons involved in criminal activity) under Guideline E and concluded the applicant displayed questionable judgment by his continuing association with a person involved in criminal activity for which no countervailing mitigating condition applied as long as the status of the illegal alien remains unchanged. Similarly, disqualifying Condition 16(g) should have been applied in the present case.

Signed: James F. Duffy \_\_\_\_\_  
James F. Duffy  
Administrative Judge  
Member, Appeal Board