

KEYWORD: Guideline B; Guideline E

DIGEST: The Judge concluded that Applicant had not mitigated the concerns arising from her foreign contacts, misconduct, and false statements. Adverse decision affirmed.

CASENO: 14-05994.a1

DATE: 09/14/2017

DATE: September 14, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 14-05994
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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 June 21, 2016, 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 June 15, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam 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. The Judge's favorable findings under Guideline B are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant was born in Iraq, earning an undergraduate degree from a university located there. She later acquired a graduate degree from a U.S. university. Applicant has certain contacts within Iraq, including a military officer. A report by the U.S. military stated that she improperly hosted and attended parties with foreign persons. In addition, Applicant worked on a telecommunications project which involved meeting with Iraqis.

In 1990, Applicant pled guilty to bribing a public official and was sentenced to 18 months in jail, along with other penalties. Several years later, she pled guilty to theft by deception and was ordered to pay restitution. This latter incident involved a friend of her daughter, who used Applicant's credit card in a fraudulent manner. Although Applicant testified that she was not aware of this misuse of her card, the daughter's friend told police that Applicant was aware of the transactions.

In 2009, Applicant was terminated from employment due to unofficial communications with the Iraqi military, including high-ranking officers, and receipt of unauthorized gifts, including a vehicle. An incident report by the military also stated that Applicant traveled to another country with large sums of money and that she engaged in improper use of her cell phone. Applicant claimed that she did not operate a vehicle on base in violation of military policy, and she submitted a letter by an Iraqi official that he had loaned her his car rather than presenting it to her as a gift. However, the military report stated that Applicant had admitted that the car had been a gift.

In her 2015 security clearance application (SCA), Applicant did not disclose her job termination. She also denied that she provided false information about the credit card incident during an interview with officials from the military. Applicant submitted various certificates of achievement. Applicant enjoys an excellent reputation for job performance and loyalty.

The Judge's Analysis

Although the Judge entered favorable findings under Guideline B, those allegations were included under Guideline E as Personal Conduct concerns. In addressing Applicant's case for mitigation, the Judge noted evidence of various false statements. She concluded that Applicant's testimony that she had not known about the credit card fraud was lacking credibility. The Judge concluded that Applicant had not mitigated the concerns arising from her foreign contacts, misconduct, and false statements. The Judge stated that Applicant had not provided sufficient evidence of rehabilitation to warrant a favorable decision.

Discussion

Applicant challenges a statement in the Judge's analysis. The Judge noted Applicant's

evidence that an Iraqi official loaned her a car rather than making it a gift. The Judge stated that this evidence was contradicted by a statement in the military report to the effect that the car was, in fact, a gift. Applicant denied that there was contradictory evidence in the record. However, we conclude that the Judge's statement is supportable, in that the record includes a document that contradicts Applicant's claims at the hearing.¹ Applicant cites to favorable evidence, such as her character evidence. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Neither has she shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 13-00502 at 3 (App. Bd. Mar. 7, 2017). We have given due consideration to the Hearing Office case that Applicant has cited in her brief. However, Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 15-01416 at 3 (App. Bd. Feb. 15, 2017).

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, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Order

The Decision is **AFFIRMED**.

¹Government Exhibit 7, Summary of Information, dated August 6, 2010, at 3: "[Applicant] received gifts from [military members], to include a sport utility vehicle which she operated on [base]."

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

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

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