KEYWORD: Guideline B; Guideline E

DIGEST: The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. Adverse decision affirmed.

CASENO: 15-06559.a1

DATE: 11/21/2017

DATE: November 21, 2017

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 April 29, 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). Department Counsel requested a hearing. On August 31, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Martin H. Mogul denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in his findings of fact and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. The Judge's favorable finding on the sole Guideline E allegation was not raised as an issue on appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant was born in Afghanistan and moved to the United States in 2004. He became a U.S. citizen in 2008. He is married and has a daughter. His wife was born in Afghanistan. His wife and daughter are U.S. citizens.

Applicant's father is a citizen and resident of Afghanistan. In his Answer to the SOR, Applicant indicated that his father has no affiliation with any Afghan organization or government. His father earns a living by selling produce. Applicant contacted his father three times in the last two years while he was deployed. Two of those occasions were to provide his father about $400 in financial support. At the hearing, Applicant testified that he last saw his father more than 20 years ago and speaks to him about once a year. He sends his father about $500 or less once or twice a year.

Applicant's five siblings are citizens and residents of Afghanistan. They have no affiliation with any Afghan organization or government. He spoke to one brother once in the last two years. He indicated that he almost never speaks to his other brother and has had no contact with his sisters in the last few years.

Applicant testified he had no other family or friends in Afghanistan with whom he keeps in contact. He works in Afghanistan for periods of about six month and then returns to the United States for about a month. None of his relatives in Afghanistan have come to visit him in the United States. He owns no property in the United States, Afghanistan, or elsewhere, but hopes to purchase a home in the United States. He testified that he is totally loyal to the United States. He provided a number of documents in mitigation, including a Commander's commendation and a certificate of appreciation.

Afghanistan's human rights record has remained poor. A Taliban dominated insurgency has become sophisticated and destabilizing. The State Department has declared that the security threat to U.S. citizens in Afghanistan remains critical as no part of the country is immune from violence.

The Judge's Analysis

Applicant has close family members, especially his father for whom he provides financial support, who are citizens and residents of Afghanistan. His ties to the United States are limited to his wife, son, and mother-in-law. Because of his strong ties to Afghanistan and his limited contacts in the United States, none of the mitigating conditions are applicable.

Discussion

Applicant contends the Judge erred in failing to find that he had a security clearance from

2010 to 2014. In his security clearance application (SCA) dated June 2014, however, Applicant answered "No" to the question that asked if the U.S. Government ever investigated his background or granted him security clearance eligibility or access.[1] Applicant also notes that the Judge twice incorrectly referred to his child as a "son" in the decision. This error was harmless because it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 12-00678 at 2 (App. Bd. Jun. 13, 2014). Applicant has not identified any harmful error in the Judge's findings of fact.

The balance of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence. In particular, he argues that he has limited contact with his relatives in Afghanistan. The Judge addressed most of his arguments in the decision. As we have previously held, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-00650 at 2 (App. Bd. Jun. 27, 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, 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

[1] In that SCA, Applicant also answered "No" to the question that asked if he ever had a security clearance eligibility/access authorization denied, suspended, or revoked. Government Exhibit 5, however, revealed that Applicant's interim security clearance was denied in 2006, and he did not know why his security clearance was denied.

The Decision is **AFFIRMED**.

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

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

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