

KEYWORD: Guideline B; Guideline E

DIGEST: Applicant has not rebutted the presumption that the Judge considered all of the evidence nor shown that the Judge mis-weighted the evidence. Refusal to provide truthful answers normally results in an unfavorable decision. Adverse decision affirmed.

CASE NO: 13-00502.a1

DATE: 03/07/2017

DATE: March 7, 2017

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 13-00502
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**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 4, 2014, 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. Tr. at 9. On December 2, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Elizabeth M. Matchinski 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 by a Defense contractor since 2005. Born in the U.S., her father worked for the Taiwanese government in a job that entailed foreign travel. In 2006, Applicant applied for a security clearance. After conducting a hearing, a DOHA Judge denied Applicant's application due to Guideline B concerns arising from her father's citizenship and employment. Applicant held a Taiwanese passport until its expiration in 2012. She used it for travel to Taiwan in 2012. She had obtained a foreign passport because her mother advised her that it would be easier to travel within Asia if she had one. Applicant denied an intent to renew her Taiwanese passport. Applicant continued to work for her employer, but her lack of a clearance prohibited her from participating in certain military projects. At her supervisor's request, Applicant reapplied for a clearance in 2012. In her SF-86, Applicant disclosed that she had previously been investigated for a clearance and that it had been denied.

In 2013, Applicant completed another SF-86. In this one, however, she answered "no" to the question about whether she had previously been investigated and/or denied a clearance. When questioned about this in her subsequent clearance interview, Applicant stated that she did not understand the questions clearly. During her hearing, she testified that she probably misread the questions through haste. She stated that she had no reason to hide her earlier clearance denial, insofar as it was already a matter of record.

The U.S. no longer recognizes Taiwan to be a sovereign nation. It recognizes the People's Republic of China as the sole government of China, although it does not recognize the PRC's claim over Taiwan. Taiwan is a significant trading partner with the U.S., although it has resumed dialogue with the PRC, resulting in closer economic ties between the two countries. Taiwan is of strategic significance to the U.S. However, it has an extensive history of economic and technological espionage against the U.S. There have been several cases recently in which Taiwanese nationals have been convicted of seeking illegally to export U.S. technology.

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

The Judge cited to evidence that Applicant's father had worked for the Taiwanese government for many years. She stated that the record is silent as to whether he receives a pension from that government and concluded that his retirement is too recent to rule out the potential for a conflict of interest. She also stated that Applicant's use of a Taiwanese passport at a time in which she also held one from the U.S. impugned her effort to show that she was not subject to a possible conflict of interest. The Judge cited to apparent inconsistent statements by Applicant concerning her father's contacts with the Taiwanese government, which impugned Applicant's credibility.

Regarding Guideline E, the Judge found Applicant's explanations for her omissions to be lacking credibility. She noted that Applicant had disclosed her prior clearance denial when she

completed her 2012 SF-86. She also stated that Applicant's claim that she hurried through her 2013 application was belied by her testimony that she had fifteen days in which to complete it. The Judge found that Applicant's omissions were deliberate.

### **Discussion**

Applicant cites to evidence that she believes is favorable to her, for example that her father is retired, that she is careful with her employer's protected information, that she has had no ethics violations, etc. She also reiterated her claims that her omissions on the 2013 SF-86 were due to carelessness. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 15-02854 at 2 (App. Bd. Nov. 22, 2016). 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. 14-06686 at 2 (App. Bd. Apr. 27, 2016).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. Refusal to provide truthful answers during the security clearance process "will normally result in an unfavorable clearance action[.]" Directive, Enclosure 2 ¶ 15(b). *See also* ISCR Case No. 14-03069 at 3 (App. Bd. Jul. 20, 2015). 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 Ra'anan  
Michael Ra'anan  
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