

KEYWORD: Guideline B

DIGEST: Applicant cites to the Judge's finding that there is no evidence that he has acted contrary to the interests of the U.S., arguing that it was inconsistent for the Judge then to have denied him a clearance. However, it is not inconsistent for a Judge to make reference to favorable information in a file yet conclude that the Applicant has not presented sufficient evidence to meet his or her burden of persuasion regarding mitigation. Adverse decision affirmed.

CASENO: 15-06272.a1

DATE: 01/29/2018

DATE: January 29, 2018

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| In Re:                           | ) |                        |
|                                  | ) |                        |
| -----                            | ) | ISCR Case No. 15-06272 |
|                                  | ) |                        |
| 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 March 25, 2016, 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 October 31, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Stephanie C. Hess 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 worked for a Defense contractor since 1989 and has held a clearance since 1994. Born in India, he came to the U.S. in the mid-1980s and became a citizen of this country in the early 1990s. His wife is also a naturalized U.S. citizen. They have two children who were born in the United States.

Applicant’s mother, numerous siblings, and his father-in-law are citizens and residents of India. Applicant speaks with his mother and one of his siblings once a week. He speaks with other siblings less frequently, from once a month to once a year. Applicant travels to India once or twice a years to visit his family. He and his wife purchased an apartment building in India, valued at about \$135,000. In addition he invested a substantial amount of money in certificates of deposit at a bank in India. These CDs are currently valued at over \$1,000,000. This money is intended for use during Applicant’s retirement. Applicant has previously expressed a willingness to withdraw the funds and transfer them to U.S. banks.

India is a parliamentary democracy that is a partner with the U.S. in countering terrorism. India has good relations with Iran and supports that country’s efforts in developing nuclear energy for peaceful purposes. India is persistently targeted by foreign and domestic terrorist organizations. It is an active collector of U.S. proprietary information, and there have been several cases of industrial espionage arising from India, both from private sources and from the government. India has certain human rights problems, such as police abuse, extrajudicial killings, and widespread corruption.

### **The Judge’s Analysis**

The Judge concluded that India’s geopolitical circumstances, Applicant’s close family members in that country, and his substantial financial holdings there raise a heightened risk that he could be subject to coercion or a conflict of interest. The Judge noted that Applicant has held a clearance for many years and has previously mitigated concerns arising from his foreign contacts. However, she concluded that the increase in value of Applicant’s financial interest in India is a

circumstance that has magnified the significance of his foreign ties. She notes that, despite his stated intention to reinvest his funds in U.S. banks, he had not done so by the close of the record. She stated that the evidence does not establish whether Applicant intends to retire to India. While there is no evidence that he has acted contrary to the interests of the U.S., neither is there evidence of deep and long-standing relationships and loyalties in the U.S. to the extent that it would mitigate concerns set forth in the SOR.

In the whole-person analysis, the Judge noted Applicant's many years of holding a clearance and his work as a Defense contractor. However, she also noted Applicant's significant financial holdings in India. She concluded that Applicant had not mitigated the concerns arising from his foreign connections.

## **Discussion**

Applicant contends that the Judge did not consider evidence favorable to him, such as his many years of holding a clearance without incident or concern. Applicant's argument is not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 17-00257 at 3 (App. Bd. Dec. 7, 2017). Applicant cites to a Hearing Office case in support of his effort to obtain a favorable result. We give this case due consideration as persuasive evidence. However, Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 16-03219 at 2 (App. Bd. Nov. 15, 2017). Applicant has not shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No 17-00257, *supra*, at 3.

Applicant cites to the Judge's finding that there is no evidence that he has acted contrary to the interests of the U.S., arguing that it was inconsistent for the Judge then to have denied him a clearance. However, it is not inconsistent for a Judge to make reference to favorable information in a file yet conclude that the Applicant has not presented sufficient evidence to meet his or her burden of persuasion regarding mitigation. *See, e.g.*, ISCR Case No. 14-01669 at 3 (App. Bd. Jan. 29, 2015) (It is not inconsistent for a Judge to find that an applicant's presentation is believable as far as it goes yet conclude that the presentation is not sufficient to meet the applicant's burden of persuasion). Contrary to Applicant's argument, the Judge appears to have satisfied the requirements of Directive ¶ 6.3, in that she considered the totality of the evidence in reaching her decision. *See, e.g.*, ISCR Case No. 16-00578 at 2-3 (App. Bd. Sep. 26, 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**.

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, 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