

KEYWORD: Guideline B

DIGEST: An applicant’s disagreement with the Judge’s weighing of the evidence is not sufficient to demonstrate error. The favorable evidence cited by Applicant does not show that the Judge’s decision was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 04-08116.a1

DATE: 07/02/2007

DATE: July 2, 2007

In Re:)	
)	
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SSN:-----)	ISCR Case No. 04-08116
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On June 9, 2005, DOHA 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 hearing. On December 11, 2006, after the hearing, Administrative Judge John Grattan

Metz, Jr., denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse clearance decision under Guideline B is arbitrary, capricious or contrary to law.¹

Applicant contends essentially that the Judge erred in weighing the evidence in this case and that his overall unfavorable decision under Guideline B is arbitrary, capricious and contrary to law. In support of that contention, Applicant argues that he does not discuss his work with his father in India; his father is now retired; he is financially independent; he is not in a position to be exploited; and he has never been involved in activities against the United States. Applicant also emphasizes his contacts with the United States including the fact that he has voted in U.S. elections, has served on a jury, and pays taxes.

The Applicant has not met his burden of demonstrating that the Judge erred in concluding that the security concerns raised by his foreign ties and connections had not been mitigated. Although Applicant strongly disagrees with the Judge's conclusions, he has not established that those conclusions are arbitrary, capricious, or contrary to law. *See* Directive ¶ E3.1.32.3.

The application of disqualifying and mitigating conditions does not turn simply on a finding that one or more of them apply to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole. *See, e.g.*, ISCR Case No. 01-14740 at 7 (App. Bd. Jan.15, 2003). Thus, 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*. An applicant'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.

In this case, the Judge weighed the mitigating evidence offered by Applicant against the nature and seriousness of the disqualifying circumstances, and considered the possible application of relevant mitigating conditions. The Judge found in favor of the Applicant with respect to all but one of the factual allegations. However, the Judge reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome all of the government's security concerns. The Board does not review a case *de novo*. The favorable record evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary

¹The Judge found in Applicant's favor with respect to SOR paragraphs 1.a, 1.c, 1.d, 1.e, and 1.f. Those favorable findings are not at issue on appeal. As part of his appeal, Applicant offers new evidence in the form of additional explanations about his circumstances. The Board cannot consider this new evidence on appeal. *See* Directive ¶ E3.1.29. Its submission does not demonstrate error on the part of the Judge. *See, e.g.*, ISCR Case No. 05-03143 at 2 (App. Bd. Dec. 20, 2006).

to law. *See, e.g.*, ISCR Case No. 02-28041 at 4 (App. Bd. June 29, 2005). Given the record that was before him, the Judge's ultimate unfavorable clearance decision under Guideline B is sustainable.

Order

The decision of the Judge denying Applicant a clearance is AFFIRMED.

Signed: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

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