

KEYWORD: Guideline B

DIGEST: There is a rebuttable presumption that a Judge is unbiased and impartial and a party seeking to rebut that presumption has a very heavy burden on appeal. Adverse decision affirmed.

CASENO: 04-10804.a1

DATE: 08/10/2007

DATE: August 10, 2007

In Re:	)	
	)	
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	)	ISCR Case No. 04-10804
	)	
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 August 21, 2006, DOHA issued a statement of reasons 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 28, 2006, after the hearing, Administrative Judge Christopher Graham denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant has raised the following issues on appeal: whether the Judge was biased against him and whether the Judge’s adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following sustainable findings of fact: Applicant is a senior employee of a federal contractor. He immigrated to the U.S. from China (PRC), earning masters degrees from U.S. universities. He became a U.S. citizen in 2002. He is legally separated from his wife, a PRC national whom he married in the PRC in 1986. He has two teenage daughters who live with him. Applicant’s mother, two brothers, and sister are citizens and residents of the PRC. He has another sister, who is a resident of a European country and through whom he communicates with his PRC relatives. None of his relatives work for the PRC government.

Applicant has traveled to the PRC on seven occasions between 1997 and 2002. These trips were for vacations. He also traveled there in 2006, upon the death of his father. He stopped vacationing in the PRC after he became a U.S. citizen. He holds a U.S. passport, his previous PRC passport having been invalidated.

The Judge found that the PRC has a poor human rights record, that it “engages in espionage against the United States through an extensive network of businesses, personnel, and specific programs designed to acquire advanced U.S. military technology.” Decision at 4. One method which the PRC uses to collect information about the U.S. is to attempt to enlist ethnic Chinese who live in the U.S. to cooperate in technology transfer.

There is a rebuttable presumption that the Judge was unbiased and impartial, and a party seeking to rebut that presumption has a heavy burden on appeal. *See* ISCR Case No. 04-03834 at 2 (App. Bd. Jul. 2, 2007). We have examined the Judge’s decision and the record as a whole. We find nothing therein to indicate “that the Judge acted in a manner that would lead a disinterested person to question” his “fairness or impartiality . . .” ISCR Case No. 02-06478 at 4 (App. Bd. Oct. 25, 2004). Furthermore, in light of the Judge’s findings of fact and the record, his decision that Applicant has not met his burden of persuasion is sustainable. *See* Directive ¶ E3.1.15. (“The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”) *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). (“The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of national security.’”)

**Order**

The Judge's decision denying Applicant a security clearance is AFFIRMED.

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

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

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