

KEYWORD: Guideline B; Guideline F

DIGEST: Judge considered Applicant’s false statements in light of the record as a whole. The Judge’s weighing of the evidence was consistent with the record. Adverse decision affirmed.

CASE NO: 12-09989.a1

DATE: 11/18/2013

DATE: November 18, 2013

In Re:)	
)	
-----)	ISCR Case No. 12-09989
)	
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 February 14, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct), Guideline B (Foreign Influence), and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 5, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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 security clearance decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline B are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant came to the U.S. from Iran in the late 1970s, becoming a naturalized citizen a few years later. His wife is a naturalized citizen. He has held a security clearance for about ten years. Applicant traveled to Iran in the early 2000s. He stated that, at the time, he had a U.S. passport, plus authorization to enter Iran for three months and did not need to use an Iranian passport. His original Iranian passport expired in the late 1980s. In his answer to the SOR, he stated that his U.S. passport was the only one he had.

In 2003, Applicant completed a security clearance application (SCA). In it he denied that he held a foreign passport and acknowledged his visit to Iran. Several years later, he completed another SCA, again denying that he held a passport from a foreign country. In completing the SCA that is the basis of the current adjudication, Applicant acknowledged having held an Iranian passport that had expired in the late 1980s. He stated nothing about an Iranian passport that he may have used in conjunction with his trip to Iran.

At the hearing, however, Applicant testified that he had in fact possessed a valid Iranian passport during the time of his trip to Iran but that he had not used it. "Applicant offered another explanation at the hearing, stating that he had the [original] passport with another passport attached to it." Decision at 3. He stated that the papers that allowed him to travel to Iran must have been accompanied by an Iranian passport. The Judge took official notice that Iran does not recognize dual nationality. If a person was born in Iran, regardless of subsequent naturalization by another country, then one must present an Iranian passport to enter the country.

Regarding Guideline F, the Judge found that Applicant had purchased several pieces of real estate during the 1990s and 2000s. He was not able to maintain the properties and, due to the poor economy, could not find renters. He filed for Chapter 7 bankruptcy protection in early 2010 and was later discharged. Applicant was able to keep his principal place of residence, which was subject to two mortgages. Applicant became delinquent in making payments on the second mortgage, which was in the amount of \$92,000. He tried to settle this debt, but he was not successful. He has contracted with a law firm to repair his credit. Applicant earns \$128,000 a year. He has \$110,000 in a 401(k) account and other investments worth about \$200,000.

The Judge's Analysis

The Judge concluded that Applicant's circumstances raised concerns under all three Guidelines alleged in the SOR. She resolved Guideline B in Applicant's favor. However, she reached the opposite conclusion regarding the other two Guidelines. She concluded that Applicant's statements regarding his Iranian passport were deliberately false, given his multiple inconsistent statements. The Judge concluded that Applicant's debt problems were recent, as were his efforts

to resolve his remaining mortgage delinquency, and that Applicant's conduct raised doubts about his worthiness for a clearance which were not satisfactorily resolved.

Discussion

In concluding that Applicant had falsified his SCAs, the Judge complied with the requirements of the Directive in that she evaluated Applicant's conduct in light of the record as a whole. *See, e.g.*, ISCR Case No. 09-07551 at 4 (App. Bd. Mar. 1, 2011). Moreover, despite Applicant's argument on appeal, the Judge's weighing of the evidence under Guideline F was consistent with the record that was before her. Applicant's argument is not sufficient to demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 11-08063 at 3 (App. Bd. Jul. 19, 2013).

The Judge examined the relevant data 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, 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 Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge

Member, Appeal Board