

KEYWORD: Guideline B

DIGEST: Applicant failed to mitigate security concerns arising from his connections in Russia. Any errors in the Judge’s decision are harmless. Adverse decision affirmed.

CASENO: 07-08526.a1

DATE: 02/25/2009

DATE: February 25, 2009

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In Re:)	
)	
-----)	ISCR Case No. 07-08526
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Emilio Jaksetic, Esq., Department Counsel

FOR APPLICANT

Richard Murray, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On April 25, 2008, 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 November 28, 2008, after the hearing, Administrative Judge Joan Caton Anthony denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether certain of the Judge’s factual findings were based upon substantial record evidence and whether the Judge’s adverse security

clearance decision is arbitrary, capricious, or contrary to law.¹ Finding no harmful error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is employed as a senior associate by a government contractor. He received a B.S. in physics from a U.S. university and pursued graduate studies in international security at another. He has held a security clearance since the early 1980s.

Applicant's wife is a Russian citizen residing with him in the U.S. His parents-in-law are citizens and residents of Russia. His father-in-law retired from the Russian government in the early 2000s and is currently employed as a security consultant. Applicant's wife speaks to her mother on the phone weekly and travels to Russia twice a year on business. She also has an older half-sister, who is a citizen and resident of Russia. Applicant has professional dealings and personal friendships with two Russian citizens. One had previously served in the Russian military in an intelligence unit. The other had served in the Russian government and currently resides in the U.S., employed by an international organization. Applicant has regular contact with both. Russia has a poor human rights record, monitoring internet and e-mail traffic. It targets U.S. technologies, and its Federal Security Service, successor organization to the KGB, operates outside the U.S., targeting national security researchers.

The Board concludes that the Judge's material findings of security concern are supported by substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.") Applicant asserts that certain of the Judge's findings are erroneous, for example the extent to which Applicant may have failed to inform his employers of his foreign contacts. Department Counsel concedes that some of the findings challenged by Applicant are erroneous. However, viewed in light of the Judge's sustainable findings concerning the nature and extent of Applicant's foreign relatives and associates, and in light of the record as a whole, the Board concludes that any factual errors in the decision are harmless. *See* ISCR Case No. 06-23112 at 2 (App. Bd. Dec. 31, 2007); ISCR Case No. 00-0250 at 6 (App. Bd. Jul. 11, 2001).

The Judge has drawn a rational connection between the facts found and her ultimate adverse security clearance decision, both as regards the mitigating conditions and the whole-person factors. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). *See also* *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge's decision that "it is not clearly consistent with national security to grant Applicant eligibility for a security clearance" is sustainable on this record. Decision at 13. *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 the national security'").

Order

The Judge's adverse security clearance decision is AFFIRMED.

¹The Judge's favorable findings under SOR paragraphs 1(e) and (g - i) are not at issue in this appeal.

Signed: Jeffrey D. Billett
Jeffrey D. Billett
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