

KEYWORD: Guideline B

DIGEST: The Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying circumstances. He reasonably explained why Applicant's evidence was insufficient to overcome the government's security concerns. Adverse decision affirmed.

CASENO: 07-13564.a1

DATE: 10/16/2008

DATE: October 16, 2008

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In Re:)	
)	
-----)	ISCR Case No. 07-13564
)	
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 November 27, 2007, 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 that the case be decided on the written record. On May 30, 2008, after considering the record, Administrative Judge Thomas M. Crean 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 security clearance decision under Guideline B is arbitrary, capricious, or contrary to law.

The Judge found as follows: Applicant is a 34-year-old radar technician for a defense contractor working in South America. He has been employed in this capacity and location by defense contractors since January 2001. He previously served in the United States Marine Corps for over five years in a similar occupation specialty. He held a security clearance for most of the time he was on active duty.

Applicant’s wife, mother-in-law and father-in-law are citizens and residents of Colombia. Applicant’s child is a dual citizen of Colombia and the United States, and resides with her parents in Colombia. She is a citizen of the United States because she was born of a United States citizen living abroad.

Applicant’s wife is an officer in the Colombian military. She has an approved resignation from the Colombian military. Applicant’s supervisor notes that he knows Applicant’s wife and has no negative information concerning her. He has no reason to doubt Applicant’s loyalty to the United States. The military mission chief overseeing Applicant’s work has known Applicant’s wife for over two years and worked several projects with her. He stated that she is a trusted officer of good character. She is highly respected by her peers and leaders, and he has full trust and confidence in her. He has no concerns about Applicant’s access to classified information. Applicant presented no information concerning his mother-in-law and father-in-law, except his admission that they are residents and citizens of Colombia.

Colombia is a constitutional democracy with the second largest population in South America. The government generally respects freedom of speech and press, freedom of assembly and association, and freedom of religion. The government has improved its respect for human rights, although serious problems remain. There were unlawful and extrajudicial killings, forced disappearances, insubordinate military collaboration with criminal groups, and other human rights abuses. Government steps to improve human rights and the security situation showed demonstrated results.

Illegal armed groups committed the majority of human rights violations in the country, including political killings, kidnaping, and torture. Colombian-based terrorists groups were weakened as a result of aggressive actions by Colombian military and police but the groups continue

to murder, kidnap, and terrorize Colombians from all walks of life. The United States State Department notes that travel to Colombia can expose visitors to considerable risk. There are at least three recognized foreign terrorist organizations operating in Colombia. These groups have carried out bombings and other attacks in and around major urban areas, including against civilian targets. Kidnaping and murders of journalists, missionaries, scientists, human rights workers, business people, tourists, and even small children have taken place. No one can be considered safe from such actions. The United States Embassy restricts official and personal travel of its employees outside of urban areas.

Applicant argues that the Judge's adverse decision should be reversed based on his good character and job performance, his ties to the United States, and the fact that his wife has resigned from the Colombian military. Applicant's arguments in that regard do not demonstrate that the Judge erred.

In support of his appeal, Applicant attaches new evidence in the form of a sworn statement, travel documentation, and a document from a Colombian military department. The Board cannot consider this new evidence on appeal. *See* Directive ¶ E3.1.29.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. The presence of some mitigating evidence does not alone compel the Judge to make a favorable 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. *See, e.g.*, ISCR Case No. 07-00434 at 3 (App. Bd. Jul. 18, 2008).

A review of the record indicates that the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying circumstances and considered the possible application of relevant conditions and factors. He reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome 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 to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). The Judge examined the relevant data and articulated a satisfactory explanation for his decision, "including a 'rational connection between the facts found and the choice made.'" *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)). Therefore, the Judge's conclusion that "it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance"¹ is sustainable. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹Decision at 6.

Order

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

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Michael D. Hipple

Michael D. Hipple

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board