

KEYWORD: Guideline B

DIGEST: The Judge's material findings are based on substantial evidence. The extent to which Taiwan engages in economic or industrial espionage against the U.S. is a proper subject of official notice by a DOHA Judge. Adverse decision affirmed.

CASENO: 08-11564.a1

DATE: 06/21/2010

DATE: June 21, 2010

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In Re:	)	
	)	
-----	)	ISCR Case No. 08-11564
	)	
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 July 6, 2009, 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 decision on the written record. On March 30, 2010, after considering the record, Administrative Judge David M. White denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether certain of the Judge’s findings of fact were supported by substantial record evidence and whether the Judge erred in his application of the pertinent mitigating conditions. Finding no error, we affirm.

The Judge found that Applicant is an employee of a Defense contractor. He served as an officer in the Taiwanese armed forces from the late 1970s to the late 1990s. He was born and raised in Taiwan but attended a post-graduate school in the U.S. After retiring from the military, he moved to the U.S. and worked for a series of private companies.

Applicant married his current wife in Taiwan. They both became U.S. citizens in the mid-2000s. Applicant’s parents, his mother-in-law, his siblings, and one of his offspring are citizens of Taiwan. Additionally, with the exception of one of the siblings, who resides in the U.S., they are all residents of Taiwan. One sibling was an officer in the Taiwanese armed forces for 20 years. Applicant denies receiving a pension from Taiwan, despite his 22 years of military service.

Taiwan is among the most active collectors of U.S. economic and proprietary information. Moreover, the People’s Republic of China (PRC) “maintains substantial intelligence collection activities in Taiwan.” Decision at 4.

In holding against Applicant, the Judge stated

Applicant offered no evidence of professional, social, or financial ties to the United States that might weigh in favor of a whole-person finding of exceptional allegiance to U.S. interests. He also provided no evidence, beyond his successful Taiwanese [military] service, tending to establish his responsibility, trustworthiness, or reliability. His claim that he has no ongoing financial ties with Taiwan are doubtful given his status as a retired . . . officer and his absence of delinquent debt after supporting a family of four during a five-year period of unemployment and self-employment as a software consultant [in the early 2000s].” Decision at 8

Applicant challenges certain the Judge’s findings of fact. For example, he claims the Judge erred in his finding regarding Applicant’s field of specialization in the Taiwanese military. Examining the Judge’s finding in light of the record, particularly Applicant’s Response to DOHA Interrogatories dated March 18, 2009, we conclude that the Judge’s finding is sustainable. After reviewing the record, the Board concludes that the Judge’s material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Applicant has not identified any harmful error likely to change the outcome of the case.

Considering the record evidence as a whole, the Judge’s material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 08-07528 at 2 (App. Bd. Dec. 29, 2009); ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007).

Applicant appears to challenge the Judge’s having taken official notice of the extent to which Taiwan engages in economic and industrial espionage against the U.S. However, these matters are a proper subject of official notice by a DOHA Judge. *See, e.g.*, ISCR Case No. 02-04786 at n.6 (App. Bd. Jun. 27, 2003).

Furthermore, a substantial portion of Applicant’s challenges to the Judge’s decision involves the presentation of evidence not contained in the record, which we cannot consider. *See* Directive ¶ E3.1.29. (“No new evidence shall be received or considered by the Appeal Board”). *See also* ISCR Case No. 08-06875 at 2 (App. Bd. Oct. 29, 2009); ISCR Case No. 08-06518 at 2 (App. Bd. Mar. 3, 2009).

After reviewing the record, we conclude that the Judge examined the relevant data and articulated a satisfactory explanation for the 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)). The Judge’s adverse 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).

### Order

The Judge’s adverse security clearance 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