

KEYWORD: Guideline B; Guideline C

DIGEST: Applicant failed to demonstrate that the Judge gave too much weight to the disqualifying circumstances while failing to consider, or mis-weighting, evidence in mitigation. Hearing Office decisions in other cases are binding neither on other Hearing Office Judges or on the Appeal Board. Adverse decision affirmed.

CASE NO: 10-00272.a1

DATE: 05/24/2011

DATE: May 24, 2011

In Re:)	
)	
-----)	ISCR Case No. 10-00272
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 26, 2010, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 11, 2011, after the hearing, Administrative Judge Henry Lazzaro denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse clearance

decision is arbitrary, capricious or contrary to law.

Applicant argues that the Judge gave too much weight to the disqualifying circumstances under Guideline B and either did not consider or did not give adequate weight to his evidence of mitigation.¹ His argument does not demonstrate that the Judge's decision is arbitrary, capricious or contrary to law.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to mitigate those concerns. Directive ¶ E3.1.15. The presence of some mitigating evidence does not alone compel the Judge to make a favorable security 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, or *vice versa*. A party'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. 10-00278 at 2 (App. Bd. Mar. 18, 2011).

In support of his appeal, Applicant cites to other Hearing Office decisions which he believes are similar to his case and in which the Judge granted the applicant a clearance. While Hearing Office decisions in other cases may be cited as persuasive authority, those cases are not binding legal precedent which a Hearing Office Judge must follow in another situation. Applicant's reliance on other Hearing Office decisions does not demonstrate that the Judge erred in this case. *See, e.g.*, ISCR Case No. 09-08417 at 2 (App. Bd. Apr. 4, 2011).

A review of the Judge's decision indicates that he weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying circumstances and considered the possible application of relevant conditions and factors. Decision at 6-8. He found in favor of Applicant under Guideline C and with respect to several of the SOR factual allegations under Guideline B. However, he reasonably explained why the mitigating evidence was insufficient to overcome all of the government's security concerns. *Id.*

The Board does not review a case *de novo*. After reviewing the record, the Board concludes that 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, 158 (1962)). "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). Accordingly, the Judge's ultimate unfavorable security clearance decision is sustainable.

¹In this case the Judge reached an adverse conclusion because Applicant's mother-in-law, an Iranian citizen, resides with Applicant part of the year and in Iran the other part of the year.

Order

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

Signed: Michael Y. Ra'anan _____

Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jean E. Smallin _____

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields _____

William S. Fields
Administrative Judge
Member, Appeal Board