

KEYWORD: Guideline B; Guideline E

DIGEST: Applicant has failed to establish that the Judge committed any harmful error. Some of his assertions on appeal fail for lack of specificity. Other issues that Applicant identified amount to harmless error because they did not affect the outcome of the case. In general, his arguments are a challenge to the Judge's weighing of the evidence and are not enough to show the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. Applicant challenges the Judge's finding that Applicant received a job offer for a position in the Afghan government. The finding is sustainable in light of the evidence in GE 2 at page 3. The finding establishes a basic part of the adverse conclusion under SOR ¶ 2.a regarding Applicant's negative answer to a question on his 2016 SCA asking if in the last seven years he has received a job offer from a foreign national. Adverse decision affirmed.

CASENO: 17-03727.a1

DATE: 08/23/2019

DATE: August 23, 2019

In Re: _____)
-----) ISCR Case No. 17-03727
)
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 March 14, 2018, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 21, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Bayard Glendon 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant was born and raised in Afghanistan. All of his children are U.S. citizens. His wife is an Afghan citizen who resides in the United States. She has applied for U.S. citizenship.

Applicant’s parents are deceased. His four siblings and brother-in-law are citizens and residents of Afghanistan. He speaks with his sibling more than quarterly. His brother-in-law worked for an Afghan ministry but now apparently works for a private entity. He has a number of nieces and nephews in Afghanistan. His wife also has family there. Applicant has travel to Afghanistan about ten to fifteen times since immigrating to the United States.

Applicant is well educated. In the past, he worked for the Afghan Government before being imprisoned due to his membership in a political party. Upon his release, he moved to a neighboring country because he feared for his life. He became a target there because he published an article opposing Islamic extremists. He immigrated to the United States in the late 1980s and was granted political asylum. In the late 1990s, he became a U.S. citizen.

From 2008 to 2015, Applicant spent substantial periods living in Afghanistan. He had a number of jobs during that period, some of which overlapped. From 2009 to 2016, Applicant served as a officer of an organization he founded in Afghanistan. He later indicated that he was not an officer of that organization but just an advisor. From the spring of 2012 to the spring of 2014, Applicant also worked for an Afghan ministry in a contract position funded through a U.S. Government agency. In his capacity, he had contact with high-level Afghan Government officials. “He was offered a position with the Afghan government and was told to wait until after the election so he could assume the position. He waited one year after the election, but in the end he was told that he was not going to be appointed.” Decision at 6.

In his security clearance application (SCA), Applicant responded in the negative to the question that asked whether any foreign national offered him a job in the past seven years. His answer was incorrect because he was offered such a position and believed it was a real opportunity. When questioned about the job offer during a security screening and at the hearing, he gave the same inconsistent response, that is:

[E]mphasizing the consulting job he had before the presidential election, not the job offer to work in Afghanistan after the election that he waited for a year to begin. His testimony did not clarify his reasoning for his negative response to the question. The source of the funds to pay his salary in a government job was irrelevant to whether a foreign national offered him a job or asked him to work as a consultant. [Decision at 6.]

He also responded “No” to the SCA question that asked whether he had any contact with a foreign government or its representatives in the past seven years. He defended his answer as a misunderstanding of the word “contact.” His testimony on key points was lacking in candor.

Afghanistan has had a turbulent history. By the end of the 1990s, the Taliban controlled most of the country and imposed repressive policies. Following military operations led by the U.S. and its coalition partners, the Taliban was forced out of power and a new democratic government took control of the country in 2004. Terrorists, however, remain active throughout the country and attack Afghan and coalition forces. A U.S. Department of State advisory warns U.S. citizens against traveling there because of instability and terrorist threats.

The Judge’s Analysis

Due to the activities of terrorists and insurgents, there is a heightened risk associated with Applicant having family ties in Afghanistan. His past contact and association with high-level Afghan Government officials exposes him and his family to an even greater risk. The evidence taken as a whole is sufficient to raise Guideline B disqualifying conditions. Applicant’s admitted and proven job offer from the Afghan Government or a small balance in a Afghan bank are not sufficient to establish any disqualifying conditions. He did not present sufficient evidence that any of the Guideline B mitigating conditions apply. In recent years, he has spent a significant amount of time in Afghanistan continuing his ties there and not developing ties in the United States.

The evidence established that Applicant deliberately concealed information in his responses to two SCA questions. His attempts to rationalize these responses demonstrates he deliberately provided such responses rather than providing the requested information. “His rationales regarding the funding source of his work and the Afghan definition of the word ‘contact’ do not justify his concealment of his job offer in Afghanistan and his close working relationships and history with high Afghan government officials.” Decision at 12.

In his May 2016 security screening interview, Applicant mentioned that he received a job offer to advise the new Afghan government and that he stayed in Afghanistan for a whole year waiting for the job to begin. Arguably, this disclosure to his interviewers could be viewed as a prompt effort to correct the falsification in his SCA. However, he equivocated and ended up telling the story that he was merely waiting for another [U.S. Government] funded contractor position. The screeners made it clear in their report that they felt he was being inconsistent and was not fully candid. His testimony at the hearing was also lacking in candor and credibility. As

a result, the good-faith requirement of this mitigating condition is not present. AG ¶ 17(a) is not established with respect to SOR ¶ 2.a. [*Id.*]

His falsifications are not minor and go right to the issue of his trustworthiness. He has not carried his burden of persuasion.

Discussion

Applicant's appeal brief contains a document and assertions that are not included in the record. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

Applicant's appeal brief also contends that the record contains insufficient evidence to deny his security request. He argues that, while he spent a significant period of time in Afghanistan since becoming a U.S. citizen, he worked on projects supporting the U.S. mission there in various ways. In general, he asserts that the security concerns raised in his case are not significant to deny him a security clearance.

Applicant has failed to establish that the Judge committed any harmful error. Some of his assertions on appeal fail for lack of specificity. *See, e.g.*, ISCR Case No. 17-03372 at 2-3 (App. Bd. Oct. 19, 2018) (discussing the reasons why assignments of error must be set forth with specificity). Other issues that Applicant identified amount to harmless error because they did not affect the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013). In general, his arguments are a challenge to the Judge's weighing of the evidence and are not enough to show the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-00650 at 2 (App. Bd. Jun. 27, 2016). Applicant challenges the Judge's finding that Applicant received a job offer for a position in the Afghan government. The finding is sustainable in light of the evidence in GE 2 at page 3. The finding establishes a basic part of the adverse conclusion under SOR ¶ 2.a regarding Applicant's negative answer to a question on his 2016 SCA asking if in the last seven years he has received a job offer from a foreign national.

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). *See also* Directive, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Order

The Decision is **AFFIRMED**

Signed: Michael Ra'anan

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board.