

KEYWORD: Guideline B; Guideline D; Guideline E

DIGEST: In 2004, Applicant engaged in sexual activity with a prostitute twice while on a business trip to a foreign country. He again hired prostitutes in another foreign country in 2014 and 2016. Adverse decision affirmed.

CASENO: 18-00944.a1

DATE: 03/20/2019

DATE: March 20, 2019

In Re:

Applicant for Security Clearance

ISCR Case No. 18-00944

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 May 18, 2018, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline D (Sexual Behavior), Guideline E (Personal Conduct), and 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 December 10, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

On appeal, Applicant contends that the Judge’s decision is arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline B have not been raised as an issue on appeal. Consistent with the following, we affirm.

The Judge’s Findings of Fact and Analysis

Applicant, who is 54 years old, has worked for Federal contractors since 1999. He honorably served in the military and has earned a master’s degree. He has been married for almost 30 years and has three adult children. Up until 2016, he held a security clearance for many years.

In 2004, Applicant engaged in sexual activity with a prostitute twice while on a business trip to a foreign country. He again hired prostitutes in another foreign country in 2014 and 2016. Prostitution is legal in both of those foreign countries. He did not provide his name or personal information to the prostitutes, nor did he communicate with them after the encounters. He disclosed these incidents during a polygraph in 2016.

After issuance of the SOR, Applicant advised his wife, facility security officer, employer’s lawyer, and some friends that he hired the prostitutes. He indicated he and his wife are resolving this issue. He submitted a number of character letters recommending his security clearance be reinstated, but it is not clear whether all of the authors are aware of his alleged conduct. He has expressed embarrassment and remorse over this conduct. He has no intention of repeating this behavior.

“[H]is sexual misbehavior causes him to be vulnerable to coercion, exploitation, or duress, and demonstrated a lack of good judgment.” Decision at 5. His most recent hiring of prostitutes occurred about two years ago. His more recent incidents cast doubt on his good judgment.

Discussion

Applicant states the facts set forth in the decision are true, but notes that there was a minor error concerning one of his son’s age and that he notified his employer about his conduct soon after taking the polygraph in 2016 as opposed to after receiving the SOR. Most of Applicant’s arguments amount to a disagreement with the Judge’s weighing of the evidence and are insufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-02488 at 3 (App. Bd. Aug. 30, 2018). Furthermore, we need not agree

with a Judge’s decision in order to find it sustainable. *See, e.g.*, ISCR Case No. 11-13965 at 3 (App. Bd. Aug. 6, 2013).

Applicant notes that he has been denied access to classified information since shortly after taking the polygraph and asks whether that succeeding period could “count for some penance.” Appeal Brief at 4. The Appeal Board’s authority to reverse or remand a Judge’s decision is limited to circumstances in which the Judge erred and correction of the identified error mandates such actions. Directive ¶¶ E3.1.33.2 and 3. Applicant also asks if there is “a time frame that would constitute enough time has passed where I could reapply.” Appeal Brief at 4. Directive ¶¶ E3.3.37-41 address reapplications. Paragraph E3.1.37 states, “[a]n applicant whose security clearance has been finally denied or revoked by DOHA is barred from reapplication for 1 year from the date of the initial unfavorable clearance decision.”

Applicant notes that the Judge relied, in part, on a government policy of combating trafficking in persons (CTIP). He asserts he was not aware of the policy until his security clearance was being adjudicated. The Judge made findings about Applicant’s lack of knowledge of the policy.¹ Reading the Judge’s decision as a whole, we conclude that, even if she erred in concluding Applicant violated the CTIP policy, she would have reached the same ultimate conclusion without considering the policy.

The Judge’s 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.”

¹ The CTIP policy applies to contractors through regulations, including the Federal Acquisition Regulation (FAR). 48 C.F.R. § 52.222.50, *Combating Trafficking in Persons*, (as amended) and 48 C.F.R. Subpart 22.17, *Combating Trafficking in Persons*, (as amended). The FAR requires contractors to notify their employees of the CTIP policy. *Id.* In this case, there is no evidence whether the contractor notified Applicant of that policy.

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