



**DEPARTMENT OF DEFENSE  
DEFENSE LEGAL SERVICES AGENCY  
DEFENSE OFFICE OF HEARINGS AND APPEALS  
APPEAL BOARD  
POST OFFICE BOX 3656  
ARLINGTON, VIRGINIA 22203  
(703) 696-4759**

Date: November 28, 2022

\_\_\_\_\_  
In the matter of: )  
)  
)  
)  
----- ) ISCR Case No. 20-00387  
)  
)  
Applicant for Security Clearance )  
\_\_\_\_\_ )

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 17, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 14, 2022, after close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert E. Coacher denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The Judge found favorably for Applicant on the Guideline F allegations and adversely to him on the Guideline E allegation. The Applicant raised the following issue on appeal: whether the Judge failed to consider all evidence in mitigation, rendering his decision arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

## **The Judge's Findings of Fact and Analysis**

Applicant is in his mid-sixties and divorced, with adult children. He served in the military in the 1970s, has earned a master's degree, and is working towards a Ph.D. He began working for his current employer, a federal contractor, in 2018. He previously worked for federal contractors from 1993 to 2012.

The SOR alleges that, in December 2012, Applicant was debarred from a military installation where he both lived and worked. The debarment was based on an investigation into possible prostitution and illegal drug activities of his then-girlfriend (GF), who lived with Applicant at the time, and Applicant's involvement in those activities.

Applicant met GF in about 2009 at a strip club where she worked as a dancer and began a non-romantic relationship. GF was then married to a military member but separated and divorced sometime in 2011.

In December 2011, Applicant accepted a job on a military base in another part of the country. In January 2012, Applicant and GF commenced a romantic relationship, and he invited her to live with him. He secured base housing, and they moved to the base in January 2012. In March, GF began dancing at a local club. She asked Applicant for money to buy cocaine, and he provided it. He also provided money for her to buy cocaine for the purpose of selling it. Applicant admitted this conduct when interviewed by base law enforcement in August 2012. During his hearing, Applicant testified that he did not know at the time he gave GF the funds that she was using them to buy drugs but instead came to realize that fact later. "After reviewing the context of his August 2012 statement to law enforcement, I do not find his hearing testimony credible." Decision at 3.

While living in base housing, Applicant filmed GF dancing a strip tease to post on a website. He also agreed to film GF and another man engaging in sexual activity, but they ultimately were too drunk to film. Applicant believed that GF was engaging in prostitution in the local area and using his credit cards to pay for hotels. In June 2012, Applicant and GF stayed at a hotel on travel. Applicant agreed to film GF while she engaged in sex in the hotel room with a soldier. Applicant stated that he thought the soldier paid GF. Under cross-examination at the hearing, Applicant stated that he agreed to film because he was trying to get GF out of prostitution, and "if it took her getting into the pornography business to do so, he was willing to help that happen." Decision at 4.

In late June 2012, Applicant cut GF off financially. Concerned that she and her friends had brought drugs into their base house, he notified base law enforcement and consented to a search of the house, which revealed no drugs. The ensuing investigation led to Applicant being debarred from the base in October 2012. Applicant was not prosecuted by state or federal officials for any violations of law.

At hearing, Applicant testified that he had improved his life in the subsequent 10 years by attending to his financial issues and pursuing his Ph.D. He has had no contact with GF since

August 2012, other than one incident in which she reached out to him on social media. He told her to leave him alone and blocked her on the media platform.

Applicant was a co-participant or accessory to GF's illegal and questionable actions while they were together as a couple in 2012. These actions included engaging in prostitution, recording GF strip tease dancing in Applicant's base housing, recording GF's sexual activity with a soldier, which Applicant believed was an act of prostitution, and allowing GF to use his financial resources to buy drugs and engage in prostitution. Applicant's active role in these criminal activities of GF shows questionable judgment, unreliability, untrustworthiness, and a vulnerability to exploitation.

Although Applicant's actions with GF happened approximately 10 years ago and there is no evidence that they have happened since then, it is troubling that a 53-year-old man who is well educated and has held a security clearance could be so influenced by a younger woman to allow himself to get involved in her nefarious activities, some of which took place on a military base. . . . While Applicant has ceased contact with GF, there is no evidence that he participated in any counseling to change his behavior. While some aspects of each mitigating condition apply, on the whole because of Applicant's overall lack of good judgment, his actions are not mitigated. [Decision at 6–7.]

## **Discussion**

Applicant has not challenged any of the Judge's specific findings of fact. Rather, he contends that the Judge erred in that he failed to consider all the evidence in mitigation and failed to apply the appropriate mitigating conditions. For example, he argues:

The Administrative Judge's decision fails to take into account all of the evidence presented, including evidence that [Applicant] admitted to his mistakes, voluntarily reported his ex-girlfriend's conduct to the appropriate authorities, and has not communicated with her in years. Furthermore, the evidence clearly establishes that [Applicant's] criminal behavior has not recurred for approximately ten (10) years and was not properly considered by Judge Coacher in his analysis. [Appeal Brief at 9–10.]

The Judge discussed all the particular matters that Applicant is raising on appeal, to include the potentially applicable mitigating conditions. Applicant's arguments are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Additionally, the Judge complied with the requirements of the Directive in his whole-person analysis by considering the totality of the evidence in reaching his decision. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020). Although we give due consideration to the Hearing Office cases that Applicant's counsel has cited, they are neither binding precedent on the

Appeal Board nor sufficient to undermine the Judge’s decision. *See, e.g.*, ISCR Case No. 17-02488 at 4 (App. Bd. Aug. 30, 2018).

Applicant failed to establish that the Judge committed any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The 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: James F. Duffy  
James F. Duffy  
Administrative Judge  
Chairperson, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: Moira Modzelewski  
Moira Modzelewski  
Administrative Judge  
Member, Appeal Board