



**DEPARTMENT OF DEFENSE  
 DEFENSE LEGAL SERVICES AGENCY  
 DEFENSE OFFICE OF HEARINGS AND APPEALS  
 APPEAL BOARD  
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Date: January 11, 2023

In the matter of:	)	
	)	
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	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Brittany D. Forrester, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 30, 2021, 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 B (Foreign Influence) of DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record, but the Government requested a hearing. On October 24, 2022, after close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Elizabeth M. Matchinski denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline B, the SOR alleged: that in about October 2016 Applicant met a Chinese national female (A) through a Chinese dating website and that in about January 2017 he met her in person in the United States; that in 2015 he provided financial support to a Filipino national female (B) and that he had sent money between 2005 and 2006 to another female foreign national (C); and that he failed to fully disclose his association with these foreign nationals. Under Guideline E, the SOR alleged: that Applicant failed to disclose his foreign contacts on his November 2016 security clearance application (SCA); that he falsely denied any contacts with

foreign nationals in January 2017 during an investigation by his employer; and that he remained in contact with at least two resident citizens of China whom he met through a dating website. The Judge found adversely to Applicant on the Guideline B allegation that he failed to disclose his associations with foreign nationals and on the Guideline E allegation that he falsely denied contacts with foreign nationals during his employer's investigation. She found favorably for Applicant on the remaining allegations. On appeal, Applicant argues that the Judge failed to consider the evidence in mitigation, rendering her decision arbitrary, capricious, and contrary to law. For the reasons stated below, we affirm.

**The Judge's Findings of Fact:** The Judge's findings are summarized in pertinent part.

Applicant is in his mid-sixties, married, with two adult children. He was honorably discharged from the Reserve force in the early 1980s. He has held a clearance since the 1970s and has worked for his current employer since the 1980s.

During his employer's security briefing for new hires in the late 1980s, Applicant learned of the requirement to report suspicious contacts with foreign nationals. As an amateur radio operator, he frequently had contact with foreign nationals and asked security officials whether he had to report those contacts. The security officer advised him to provide his radio log books occasionally for review. Applicant did so for several years but then became inactive as a radio operator for a period of time.

From 2005 to 2009, Applicant was an active member of a Japanese dating website. From 2006 to 2008, he was an active member of a Philippine dating website. He accessed these foreign websites two or three times per week and did not inform his spouse about the activity. In about 2006, Applicant had online contact with C, a Filipino citizen and resident. They had online contact about two dozen times over a few months, and Applicant sent her about \$300 to help with bills. From about 2010 to 2015, Applicant had online contact with another woman from the Philippines, B, on about a dozen occasions. Between September and October 2015, Applicant sent B about \$250 to help with bills.

In about 2014, Applicant resumed his amateur radio activities and asked a security manager at work whether he had to provide his log books and report his contacts. In that context, the security manager informed Applicant that reporting an incidental foreign contact was not required unless a close and continuing relationship developed or there was any attempt to elicit information. Applicant did not disclose to the security manager that he used a foreign dating site to meet foreign nationals.

In 2012, Applicant joined a Chinese dating website. In response to DOHA interrogatories, Applicant indicated that he closed this account in 2015. However, other evidence indicates that he met A on the website in October 2016 and that they had contact by text. In January 2017, A came to the United States to visit family and friends and met Applicant for lunch on January 10, 2017. After A returned to China, she and Applicant continued to have online contact for a short period of time.

Later that same month, a security manager at Applicant's firm was given text and email messages between Applicant and A. They were forwarded by a friend of A's who was concerned about the relationship. The messages revealed that Applicant had been in contact with A for about two months by text and email prior to their lunch on January 10, 2017.

In the ensuing internal investigation, the investigators discovered that Applicant had not reported any foreign contacts on his recently completed SCA and that his profile page on the Chinese dating website stated that he had frequent work trips to Japan, from which he could easily travel to China.

On January 19, 2017, Applicant was interviewed by his firm's counterintelligence personnel. He initially denied that he had any foreign contacts. Regarding the Chinese dating website, Applicant told the investigators that his wife was unaware of his contacts on the website. He denied that he had in person contact with any of the women with whom he communicated and denied that he had provided any of them money. After a reminder to be honest about any in-person meetings, including with A, Applicant admitted that he had met with her the prior week.

Shortly thereafter, the investigators found two receipts for wire transfers in Applicant's desk from 2015 totaling \$250, addressed to B in the Philippines. Applicant was re-interviewed the following week to discuss the wire transfers. Applicant admitted that he provided the money to B in 2015, but claimed that he did not recall the wire transfers during the prior interview. He denied providing any money to any other foreign nationals. After being told that an adverse information report would be filed, with a resulting government investigation, Applicant admitted that he had previously provided C approximately \$300 during the 2005–2006 timeframe. The employer issued a written warning for not being completely truthful during the investigation and filed an incident report with DoD.

In July 2019, Applicant was interviewed by a security clearance background investigator. When asked about any additional foreign contacts, Applicant disclosed that he had contact with two women in China. "He stated that he did not know much about them and did not consider them to be close and continuing contacts, so he had not reported them to his security office." Decision at 7. Applicant reported that he continued to contact women via the Chinese dating website. He related that his wife first learned about his contacts with female foreign nationals in February 2017, when he told her in light of his employer's adverse information report.

In response to DOHA interrogatories in January 2021, Applicant confirmed that he was in contact with the two Chinese women discussed during his background interview. He reported that his contacts with them varied in frequency from two to three times per week, to daily at times, to some weeks with no contact. He had not met either of them in person but had video chats several times from his home. He provided them with information about his family and discussed U.S. and Chinese politics.

At his August 2022 hearing, Applicant "testified discrepantly that his contacts with the two [Chinese] women stopped 'about three years ago.'" Decision at 7, citing Tr. 35, 55. When confronted with his January 2021 admission to current contact with them, Applicant responded that he had some contact with the women in 2020. He indicated that he did not believe his contacts

with them were reportable to his employer because they were not close and continuing. Conversely, he also testified that he reported the contacts to his employer, but submitted no evidence to corroborate that claim.

At hearing, Applicant denied that he intentionally lied during his company's investigation into his foreign contacts, asserting that he did not think his in-person meeting with A needed to be reported because it was not suspicious. He asserted that his spouse knew at the time that he accessed foreign dating websites. He stated that both his employer's report of investigation and the summary of his background interview were inaccurate in reporting that he had said otherwise at earlier junctures.

**The Judge's Analysis:** The Judge's analysis is quoted in pertinent part.

#### Guideline B

Applicant made much of the fact that he is a longtime amateur radio operator. However, the Guideline B concerns in this case involve his unrelated contacts via foreign dating websites, texts, emails, and video chatting with female foreign nationals living abroad. . . . He was a member of a [Japanese] dating site from 2005 to 2009, a [Filipino] dating site from 2006 to 2008, and a [Chinese] dating site from 2010 through at least 2016, when he met [A]. He had online contact with [C] about 24 times over a couple of months in 2006. He had online contact with [B] about 24 times between 2010 and October 2015. He met [A] in October 2016 via a [Chinese] dating website. Applicant's efforts to equate his contacts with these foreign nationals to random encounters of the type he might have while on vacation with foreign persons is not persuasive. [Decision at 10–11.]

The evidence shows that Applicant's contacts with [A] of [China] were ongoing as of his November 2016 [SCA] and were certainly recent as of his employer's January 2017 investigation into his unreported contacts with her. Applicant falsely denied any foreign contacts when first questioned during his employer's investigation. He was required to cooperate with his employer's investigation and disclose his foreign contacts, and he admitted that he had contact with [A] only after he was confronted with proof of his contacts by the counterintelligence personnel. Disqualifying condition AG 7(c), "failure to report or fully disclose, when required, association with a foreign person, group, government, or country," applies. [*Id.* at 12.]

In one important aspect, the concerns of undue foreign influence are not completely mitigated. Applicant has not demonstrated that he can be counted on to promptly disclose any reportable foreign contacts in the future. He continues to hold the opinion that "a single event occurrence of a contact, even in person, is not reportable." Even as to an exchange of multiple emails and texts to a foreign national, Applicant testified that he does not view the contact as continuous, even if it occurs every couple of months. . . . He testified that he last accessed an online dating site some three years ago, but the evidence shows that he began contact with

two new [Chinese] female resident citizens . . . via the dating website in the year preceding his July 2019 [interview]. He continued to have online contact with them despite knowing of the concerns presented by [China]. In January 2021, he wrote of his contacts with them in the present tense. While he asserts that he informed his employer about those contacts through the [background] investigator, there is no proof that his employer is aware of his more recent contacts with [Chinese] nationals. [*Id.* at 13.]

#### Guideline E

Applicant exhibited an unacceptable lack of candor about his foreign contacts during his employer’s investigation in January 2017. During his first interview with his employer’s counterintelligence personnel, Applicant denied any foreign contacts. After being reminded of his responsibility to be truthful and cooperative, he denied ever meeting any of the foreign women in person and ever providing them any money. It was only after he was further reminded to be honest and was shown proof of his recent in-person meeting with [A] that Applicant admitted he had lunch with the [Chinese] female. When re-interviewed to discuss the wire transfer receipts found in his desk at work, Applicant stated he did not think about the transfers. He claimed that the two money transfers were the only ones. It was only after he was told that the company would be submitting an adverse information report that he admitted to providing about \$300 to [C] in 2006. [*Id.* at 14–15.]

Applicant has claimed to have acted on the advice of a security manager that only close and continuing contacts or those of a suspicious nature are required to be reported. The security manager indicated that he met with Applicant in 2014 “about foreign reporting requirements due to his involvement in amateur radio.” He told Applicant that reporting incidental foreign contacts was not required unless a “close and continuing” relationship developed or there was any attempt to elicit information about his job that was outside the scope of normal conversation in meeting someone. Applicant cannot reasonably rely on that advice for mitigation . . . because the advice was given with the understanding that it pertained to amateur radio contacts. Applicant never informed the security manager that he had joined foreign dating websites or maintained contacts with women he met on those dating sites.

Although some five years have passed since Applicant lied during his employer’s investigation into his foreign contacts, [no mitigating conditions] fully apply due to ongoing concerns for his judgment, reliability, and trustworthiness. Applicant exhibited a lack of candor at his hearing in several aspects. [Decision at 16.]

#### **Discussion**

Applicant has not challenged any of the Judge’s specific findings of fact. Rather, he contends that the Judge erred in that she failed to consider all the evidence in mitigation and

“effectively ignored the applicable mitigating conditions.” Appeal Brief at 4. Through counsel, Applicant primarily relies on two arguments throughout his brief. First, counsel for Applicant argues that the Judge failed to consider the passage of time as a mitigating factor and states repeatedly that Applicant’s last contact with a foreign national was in 2017. *Id.* at 6, 7, and 11. Instead, the record fully supports the Judge’s finding that Applicant contacted two women in China via a Chinese dating website in the year prior to his July 2019 background investigation interview; that he continued to have online contact with them despite knowing of the concerns presented by China; and that, in January 2021, he described his contacts with them in the present tense. Decision at 13. The argument of Applicant’s counsel regarding the passage of time is contradicted by the evidence of record.

Second, throughout his appeal brief, Applicant reiterates the argument that he made at hearing—that his failure to report the contacts was “an honest mistake on his part” based on advice he had received from his security officer regarding “close, frequent, and continuous contact.” Appeal Brief at 9. *See also*, Appeal Brief at 6, 10, 11, and 12. The record, however, supports the Judge’s determination that Applicant never informed the security manager that he had joined foreign dating websites or maintained contacts with women he met on those sites and that the security manager’s advice was instead given in the context of Applicant’s amateur radio hobby. The Judge found that Applicant’s contacts with foreign nationals via foreign dating websites, texts, emails and video chats were unrelated to his amateur radio hobby. Decision at 10. This finding is well supported by the evidence, as is her conclusion that “Applicant cannot reasonably rely on that advice for mitigation.” *Id.* at 16.

Additionally, we note the Judge’s adverse credibility determination and defer to it. Directive ¶ E3.1.32.1. In arriving at her adverse determination, the Judge concluded that Applicant not only lied during his employer’s investigation but also “exhibited a lack of candor at his hearing in several aspects,” and she provided a detailed analysis of the instances in which he was not candid or truthful. Decision at 16.

The remainder of Applicant’s brief is fundamentally an argument that the Judge misweighed the evidence. None of Applicant’s arguments, however, are enough to rebut the presumption that the Judge considered all of the record evidence or to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Moreover, the Judge complied with the requirements of the Directive in her whole-person analysis by considering all evidence of record in reaching her 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 case that Applicant’s counsel has cited, it is 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 has failed to establish that the Judge committed any harmful error or that he should be granted any relief on appeal. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the record. “The general standard is that a clearance may be granted only when ‘clearly consistent with 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 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