



**DEPARTMENT OF DEFENSE**  
**DEFENSE LEGAL SERVICES AGENCY**  
**DEFENSE OFFICE OF HEARINGS AND APPEALS**  
**APPEAL BOARD**  
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Date: March 28, 2024

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 In the matter of: )  
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 Applicant for Security Clearance )  
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ISCR Case No. 20-01445

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Mendez, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro Se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 11, 2020, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guidelines B (Foreign Influence) and E (Personal Conduct) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On February 27, 2024, Defense Office of Hearings and Appeals Judge Nichole L. Noel denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline B, the SOR, as amended, alleged that Applicant’s spouse, mother-in-law, and friend are citizens and residents of Colombia. The Judge found the Guideline B allegations in Applicant’s favor. Therefore, although Applicant addresses this allegation on appeal, it is not a matter under review. Under Guideline E, the amended SOR alleged and the Judge found adversely that Applicant falsified information during February and March 2019 security clearance interviews, failed to report foreign travel, used online dating websites to initiate romantic liaisons

or relationships with women from Columbia, and continued to maintain contact with one or more of these women.

On appeal, Applicant asserts that the Judge was biased against him, made findings of fact that are either incomplete or unsupported by the evidence, and failed to properly apply the mitigating conditions. Consistent with the following, we affirm.

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

Applicant is in his mid-30s and worked as an engineer for a federal contracting company from April 2017 to February 2023, at which time he was placed on administrative leave pending the outcome of his security clearance adjudication. He has held a security clearance since September 2015. In March 2018, Applicant's employer filed an incident report regarding his travel to Colombia and his relationship with a Colombian woman. In conjunction with the incident report, a Defense Security Service counterintelligence investigator interviewed Applicant at which time Applicant acknowledged that he traveled to Colombia in August 2017 and February 2018, and that he was engaged to marry a Colombian national. Applicant also was interviewed on February 21, 2019, and March 28, 2019. During the February 2019 interview, Applicant told the investigator that, in August 2017, in response to an inquiry from his supervisor regarding his failure to return from an assignment, he had informed the supervisor that he was travelling to his home country of Ghana to attend a family event but changed his mind and traveled to Colombia instead. He did not report this trip in advance, nor his intended trip to Ghana, and stated that he was unaware of a requirement to do so. He also told the investigator that, while on that trip, he met his future wife, a Colombian woman, while walking through a shopping mall. He denied meeting the woman before the trip.

During the March 2019 interview, Applicant eventually acknowledged that he also did not report his February 2018 travel to Colombia, asserting that he did not know he needed to do so. Applicant again denied knowing his wife before his first trip to Colombia in August 2017 and reiterated that he met her for the first time during the trip. After being further questioned about the circumstances under which he met his wife, Applicant admitted that he met her on an online dating site around May 2017. He stated that he did not previously disclose this because he was embarrassed by meeting his spouse online and did not want people to look at him differently.

In his May 2020 response to interrogatories, Applicant stated, "[d]ue to stigmatization that 'oh he met his wife online,' I did not disclose that I met my wife online first. I met my wife online in summer 2017." Decision at 6 (citing Government Exhibit 2). Applicant made numerous other trips to Columbia and subsequently divorced his wife in April 2022 after she refused to cooperate with the process required to immigrate to the United States. That same month, Applicant met another Colombian woman online and returned to Columbia in September 2022 to visit her in-person. He claims that after that visit he decided not to pursue that relationship or any other with a foreign national.

## Discussion

Applicant argues on appeal that the Judge was biased against him. We do not find his argument persuasive. There is a rebuttable presumption that a judge is impartial and unbiased, and a party seeking to overcome that presumption has a heavy burden of persuasion. *See* ISCR Case No. 02-08032 at 3 (App. Bd. May 14, 2004). The issue is not whether Applicant personally believes that the Judge was biased or prejudiced against him but, rather, whether the record “contains any indication that the Judge acted in a manner that would lead a reasonable person to question the fairness and impartiality of the Judge.” *See* ISCR Case No. 01-04713 at 2 (App. Bd. Mar. 27, 2003).

Applicant’s allegation of bias appears to be premised in his belief that the Judge’s finding that Applicant lacked credibility could only be the result of a biased assessment. His vague example asserts that, because he e-mailed the Judge prior to the hearing and the Judge directed him not to do so, her “emotions” influenced her adverse credibility determination. There is no nexus between these two points. Formulating an opinion of Applicant’s credibility is permissible and within the scope of the Judge’s role, particularly in a case involving alleged lies. A judge may form and express an opinion about the evidence at hearing, including the credibility of a witness or the applicant. This does not demonstrate bias. *See, e.g.*, DISCR Case No. 94-0972, 1995 WL 470208 at \*3 (App. Bd. Jul. 20, 1995) (citing *Okura & Co. v. Tobey*, 871 F.2d 775, 776 (8th Cir. 1989)). The transcript in this matter reflects that the Judge’s questions were often pointed; however, they were targeted to the issues to be determined at hearing. *See, e.g.*, ISCR Case No. 03-24632 at 2 (App. Bd. May 19, 2006) (no bias even though the judge’s comments were “gratuitous and at times harsh”); ISCR Case No. 15-03162 at 3 (App. Bd. Jul. 25, 2017) (no impartiality although the judge “questioned Applicant sharply at times”); ISCR Case No. 16-03451 at 4 (App. Bd. Dec. 26, 2017) (no bias although judge “conveyed a certain testiness”); ISCR Case No. 20-02787 at 4 (App. Bd. Mar. 9, 2022) (no impartiality where the judge’s “questioning and comments were occasionally sharp”).

Having examined the record, we find that there is substantial independent evidence upon which the Judge’s credibility determination was based, including that Applicant was trained regarding his obligation to report foreign travel and admitted that he lied to investigators about when and how he met his former spouse. There is nothing in the record that would likely persuade a reasonable person that the Judge lacked the requisite impartiality. Applicant’s concerns are insufficient to overcome the rebuttable presumption that the Judge acted in an impartial and unbiased manner.

The remainder of Applicant’s challenges to the findings and whole person analysis fail to establish any harmful error. The Judge’s material findings of security concern are “based upon substantial evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence,” and Applicant has cited to no harmful error in the Judge’s findings. *See* ISCR Case No. 12-03420 at 4 (App. Bd. Jul. 25, 2014).

We find that the Judge adequately addressed the circumstances surrounding all aspects of Applicant’s travel to Columbia, the parameters of his relationship with his ex-wife, and the manner

in which he revealed this information to his employer and Government officials. Applicant'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 that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law." ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Moreover, Applicant's arguments fail to rebut the presumption that the Judge considered all of the record evidence. The Judge's conclusion that Applicant failed to mitigate the personal conduct security concerns is sustainable.

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, which is sustainable on the 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). "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." AG ¶ 2(b).

### **Order**

The decision is **AFFIRMED**.

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

Signed: Allison Marie  
Allison Marie  
Administrative Judge  
Member, Appeal Board

Signed: James B. Norman  
James B. Norman  
Administrative Judge  
Member, Appeal Board