

KEYWORD: Guideline B; Guideline E

DIGEST: The Judge’s findings capture the essence of Applicant’s hearing testimony. After reviewing the record, we conclude that the Judge’s material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Considering the record evidence as a whole, the Judge’s material findings of security concern are sustainable. Favorable decision affirmed

CASE NO: 14-06751.a1

DATE: 06/29/2016

DATE: June 29, 2016

In Re:)
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-----) ISCR Case No. 14-06751
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Applicant for Security Clearance)
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Gregory F. Greiner, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 15, 2015, 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 March 31, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Juan J. Rivera denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge’s findings of fact were supported by substantial evidence and 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 has been married to his current wife for about 20 years. During most of 2013, he worked for a contractor supporting U.S. interests in Kyrgyzstan. He met a woman, a citizen and resident of Kyrgyzstan, and hired her as a housekeeper and cook. Two weeks after he met her, Applicant and the woman engaged in sexual activity. Sometimes after she cooked dinner, the two ate together. He paid her \$200 monthly and gave her \$200 severance pay. He left Kyrgyzstan at the end of 2013. Later the following year, Applicant gave the woman \$500 on the anniversary of her father’s death. He maintained contact with her after he left Kyrgyzstan, considering her to be a friend. They communicated over Skype or text messaging, most recently two months before the hearing. He stated that he would end his relationship with her if that were necessary in order to keep his clearance. At the time of his clearance interview in 2014, Applicant’s spouse was not aware of his relationship with the woman. He did not disclose his relationship with the woman to his employer, although he stated in his security clearance application that she was a friend. He stated that he stopped the sexual part of his relationship with her before it became a security concern. He knew that other employees were in trouble because of their relationships with foreign nationals. Applicant enjoys a good reputation for the quality of his work performance and for his ability to work with others. He is also considered diligent, punctual, and conscientious.

The Judge’s Analysis

Under Guideline B, the Judge concluded that Applicant’s connections with the woman “are significant.” Decision at 8. He frequently communicated with her, gave her money, and did not end the communications even after receiving the SOR and after his wife discovered his conduct. He concluded that Applicant’s relationship with the woman outweighs his connections in the U.S. Regarding Guideline E, the Judge stated that Applicant engaged in sexual activity with the woman while in Kyrgyzstan, despite his knowledge that relationships with foreign nationals posed security concerns. He continued his contact with her, even after his spouse objected. In the whole-person analysis, the Judge reiterated his findings about Applicant’s relationship with the woman. He stated, that the woman “visited Applicant’s apartment in Kyrgyzstan about twice a week from September to December 2013. He engaged in sexual activity with her.” *Id.* at 10.

Discussion

Applicant argues that the Judge’s findings are not based upon substantial evidence. He states that he did not have a sexual or romantic relationship with the woman. Rather, they had a single

sexual encounter. We examine a Judge’s findings to see if they are supported by “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive ¶ E3.1.32.1. *See* ISCR Case No. 14-04226 at 3 (App. Bd. Aug. 18, 2015). The Judge’s findings include only one incident of sexual activity between Applicant and the woman. However, he also found that Applicant and she had an ongoing relationship that was of a personal, rather than strictly professional, nature, despite his having hired her as a housekeeper. The Judge’s findings capture the essence of Applicant’s hearing testimony. After reviewing the record, we conclude that the Judge’s material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Considering the record evidence as a whole, the Judge’s material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision.¹ 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, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

Order

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairperson, Appeal Board

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

¹The record contains no official notice documents describing the geopolitical situation in Krygyzstan, and the Judge made no findings on this matter. The Directive requires that adjudication under Guideline B should take into account such things as “whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.” Enclosure 2 ¶ 6. In the past we have remanded cases for the Judge to make findings about the country at issue. *See, e.g.*, ISCR Case No. 07-14508 (App. Bd. Oct. 22, 2008). In the case before us, however, the Judge’s adverse decision is independently sustainable under Guideline E. Therefore, there is no reason to remand the case for further processing.

Signed: Catherine M. Engstrom
Catherine M. Engstrom
Administrative Judge
Member, Appeal Board