

KEYWORD: Guideline E

DIGEST: Applicant’s wife maintained two pornographic web sites, which could affect Applicant’s professional or community standing. Accordingly, they are a means through which he could be subjected to coercion. Adverse decision affirmed.

CASENO: 08-06969.a1

DATE: 07/07/2010

DATE: July 7, 2010

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In Re:)	
)	
-----)	ISCR Case No. 08-06969
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 10, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On April 13, 2010, after the hearing, Administrative Judge Mary E. Henry 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 adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact, which include Applicant's admissions contained in his response to the SOR: Applicant is a network architect for a Federal contractor. Applicant is married and has a child.

Applicant met his wife in the early 2000s, and they began dating in 2004, marrying two years later. Applicant's wife maintains two web sites which specialize in hardcore pornographic content, some of which includes photographs of her, as well as written commentary about events in her life.¹ She does not identify herself explicitly in these web sites, relying on a pseudonym. However, she also operates a third web site under her own name, which contains references to Applicant. It would be possible for a person with the requisite computer skill to connect Applicant's wife with the two pornographic sites. She solicits clients on one or more of her web sites, and she maintains an "escort" posting advertising her own availability for "adult entertainment."²

Applicant's family is not aware of these web sites. Moreover, Applicant's employer is not aware of them either. The Judge stated that Applicant had not demonstrated any steps he had taken to reduce or eliminate his vulnerability to exploitation or coercion.

Applicant contends on appeal that he has not advised his employer or his family members of his wife's web sites because the content is not something he would normally discuss with them. He states that the web sites are accessible to the public and, therefore, are not by nature the sort of private matters that could lead to blackmail. However, under the facts of this case, the Judge's findings and the record evidence establish a reason to believe that the web sites, if they became identified with Applicant through his wife, could affect his professional or community standing. Accordingly, they are a means through which Applicant could foreseeably be subjected to coercion or duress. *See* Directive, Enclosure 2 ¶ 16(e). The Judge's conclusion that Applicant's presentation failed to mitigate this concern is sustainable.

After reviewing the record, we conclude that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge's adverse 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).

¹The Judge found that at least some of the photos and written material on one of the wife's pornographic sites were produced during the wife's prior relationship with a man other than Applicant. This relationship was part of a series of events that achieved a degree of notoriety. Although not separately alleged, these findings and the evidence upon which they are based are relevant to the Judge's whole-person analysis. *See* Directive, Enclosure 2 ¶ 2(a).

²In her findings, the Judge stated that Applicant denied that his wife solicits clients or advertises that she provides adult entertainment. However, Applicant admitted this allegation in his response to the SOR. Additionally, the record contains evidence which supports Applicant's admissions. Government Exhibit (GE) 5 at 10-11; GE 8 at 2.

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

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