

KEYWORD: Guideline B; Guideline D

DIGEST: Since 2002, Applicant has conducted an extra-marital affair with a woman from Ecuador. He has not disclosed the affair to anyone except a friend. He has paid the woman \$100 per month and bought phones for her to resell. Applicant failed to list the woman on his security clearance application. The Judge concluded that Applicant is subject to duress. Adverse decision affirmed.

CASENO: 08-07613a.1

DATE: 07/30/2009

DATE: July 30, 2009

In Re:)	
)	
----)	ISCR Case No. 08-07613
)	
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 January 15, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct), Guideline B (Foreign Influence) and Guideline D (Sexual Behavior) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On June 4, 2009, after considering the record, Administrative Judge David M. White denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge erred in his analysis of the pertinent mitigating conditions. Finding no error, we affirm.

The Judge found that, since 2002, Applicant has conducted an extra-marital affair with a woman from Ecuador. He has not disclosed the affair to anyone except a friend. He has not advised his supervisors or his spouse. He has paid the woman approximately \$100 per month and has purchased cell phones for her to resell. When asked on his security clearance application (SCA) to list foreign associates, Applicant did not list the woman. The Judge concluded that, under the circumstances, Applicant is “subject to duress.” Decision at 12.

In his brief, Applicant presents new evidence not contained in the record, including medical information which purportedly would demonstrate that he did not intend to falsify his SCA. The Board cannot consider this evidence. *See* Directive ¶ E3.1.29. (“No new evidence shall be received or considered by the Appeal Board”). *See also* ISCR Case No. 08-06518 at 2 (App. Bd. Mar. 3, 2009). After reviewing the record, the Board concludes 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 decision that “it is not clearly consistent with the interests of national security to grant or continue Applicant’s eligibility for a security clearance” is sustainable on this record. Decision at 13. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’”).

Order

The Judge’s adverse security clearance decision is AFFIRMED.

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

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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