

KEYWORD: Guideline E

DIGEST: The Directive presumes there is a nexus between proven circumstances under any of its guidelines and an applicant’s security eligibility. Adverse decision affirmed.

CASENO: 15-02407.a1

DATE: 10/12/2017

DATE: October 12, 2017

In Re:)	
)	
-----)	ISCR Case No. 15-02407
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Skyler Samp, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 5, 2016, DoD 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). Department Counsel requested a hearing. On July 27, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Richard A. Cefola 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’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact and Analysis

Since about 2003, Applicant has used an alias to meet women online with whom he conducts extramarital affairs. He has done so about fifteen times, and many of the women have been foreign nationals. In 2012, his security clearance was revoked due to this behavior. His last extramarital affair took place about two weeks before the hearing. Applicant's wife is unaware of his conduct, and Applicant does not want her to find out about it. In the Analysis, the Judge concluded that Applicant's conduct raised concerns under Guideline E. He then listed the pertinent mitigating conditions and stated that none of them applied. In the whole-person analysis, the Judge noted Applicant's good job performance but stated that he was left with questions and doubts about Applicant's fitness for a clearance.

Discussion

Applicant denies that his conduct raises security concerns. Among other things, he states that there is no evidence that he is vulnerable to coercion because he keeps his work and his personal relationships separate. Irrespective of whether there is evidence that Applicant has actually come to the attention of foreign intelligence operatives, there is certainly a rational connection between conduct that Applicant does not want his wife to discover and a concern that he could be pressured to disclose classified information should this conduct come to the attention of those interested in acquiring U.S. protected information.¹ See, e.g., ISCR Case No. 15-02903 at 2 (App. Bd. Mar. 9, 2017) for the proposition that the Directive presumes there is a nexus between proven circumstances under any of its guidelines and an applicant's security eligibility.

Applicant challenges the Judge's mitigation analysis. That analysis is admittedly conclusory. However, the Directive requires a Judge to set forth findings, policies, and conclusions as to the allegations in the SOR. Directive ¶ E3.1.25. It does not prescribe a quantum of analysis. Each case must be decided on its own merits, and in this one we conclude that the Judge has satisfied the requirements of the Directive.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. 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, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Order

¹ "[Q]: The mere fact that you don't want your wife to know. I assume your parents, if they are still alive, don't know. Your brothers and your sisters don't know. Your close friends don't know. And probably the people you work with don't know. Do you understand that puts you in a position of compromise? [A]: I understand it could potentially put me in a position of compromise. [Q]: Okay. Well, you have no witnesses here testifying for you. Obviously, you don't want them to know. Correct? [A]: Correct. [Q]: Okay. Who knows about your [lovers] and your relationships with them? [A]: Myself and them alone." Tr. at 50.

The Decision is **AFFIRMED**.

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board

CONCURRING OPINION OF ADMINISTRATIVE JUDGE MICHAEL RA'ANAN

There are cases where the parties or the Board might benefit from a more extensive analysis by the Administrative Judge. This is not such a case. Applicant's conduct (surreptitiously engaging in extra-marital affairs using a pseudonym for more than a decade) raises such obvious security concerns that it is not plausible to imagine any benefit were we to ask the Judge to elaborate. Furthermore, it is not plausible to imagine a sustainable favorable decision on this record.

Signed: Michael Ra'an

Michael Ra'an
Administrative Judge
Chairperson, Appeal Board