

KEYWORD: Guideline E

DIGEST: The Judge explicitly addressed the evidence cited by Applicant. The Judge reasonably explained why Applicant had failed to meet his burden of persuasion. Adverse decision affirmed.

CASENO: 08-06873.a1

DATE: 12/18/2009

DATE: December 18, 2009

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In Re:)	
)	
-----)	ISCR Case No. 08-06873
)	
)	
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 March 11, 2009, 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 decision on the written record. On October 2, 2009, after considering the record, Administrative Judge Edward W. Loughran 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 mis-weighed the record evidence; whether the Judge’s whole-person analysis was erroneous; and whether the Judge’s adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge found that Applicant is a 51-year-old employee of a defense contractor. He holds a Masters degree in Engineering. He is married with two children.

Applicant has a long association with the Boy Scouts of America. He was a Scout as a youth and later served as an adult leader. From 1986 to 1987, while a Scout leader, Applicant engaged in sexual contact with a Boy Scout (A), who was 15 and 16 years old. Three of the incidents occurred during Scout-sponsored events and another four occurred either at Applicant’s home or on trips taken with the knowledge and consent of A’s parents. During several of the incidents, either Applicant or A or both had consumed alcohol. In fact, Applicant provided the alcohol on more than one occasion.

Applicant met his wife in 1987. After that, he had no further sexual contact with A who, nevertheless, was an usher at Applicant’s wedding and babysat for Applicant’s older child.

In 2003 Applicant received a phone call from an old girlfriend of A. “She told him that she was in possession of some letters that indicated that Applicant had sexually abused A. She asked to meet Applicant to discuss the letters.” Decision at 3. Later the same woman phoned Applicant’s wife, telling her about the molestation. Applicant subsequently received two envelopes in the mail, which contained articles about child abuse. The second envelope also contained a handwritten note.¹

In 2004 Applicant admitted his sexual involvement with A to his wife and to government investigators. As a consequence, a government agency revoked Applicant’s access to Sensitive Compartmented Information (SCI). Applicant’s response to the SOR included a copy of his written appeal of the 2005 SCI denial. The appeal contains numerous letters praising Applicant’s character, job performance, loyalty, and reliability. It also contains letters from people who know Applicant through the Boy Scouts.² These letters state that they trust Applicant with their children. “None of

¹Item 4 contains, *inter alia*, the two articles and the note, which was written by A and addressed to Applicant. It describes A’s anger over the molestation. The Judge stated that he considered the fact that the note was sent to Applicant but that he did not consider it for the truth of the matters contained therein. Decision at 2.

²The SOR alleged that Applicant continued as an adult Scout leader at least through 2005. Applicant admitted this allegation in his response to the SOR.

the letters stated that the authors were aware of Applicants’s sexual relationship with a [S]cout.” *Id.* at 5. The appeal also contained a psychological evaluation of Applicant, which concluded that he was not a pedophile and that there is little likelihood that anything like Applicant’s conduct with A would happen again.

On appeal, Applicant appears to contend that the Judge either did not consider or that he mis-weighted favorable evidence, such as the letters of reference and the psychological evaluation. However, a Judge is presumed to have considered all the evidence in the record. *See, e.g.*, ISCR Case No 07-00196 at 3 (App. Bd. Feb. 20, 2009); ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008). Indeed, the Judge explicitly addressed the evidence cited by Applicant. However, he also provided a reasonable explanation for his conclusion that Applicant had failed to meet his burden of persuasion as to mitigation. The Judge noted the serious nature of Applicant’s misconduct, in that it involved multiple incidents in which he abused a position of trust and responsibility. He also noted a paucity of record evidence as to the current nature, if any, of Applicant’s interactions with A and that Applicant retains an association with the Boy Scouts, although the record provides no reason to believe that Scouting officials or parents are aware of his misconduct. The Judge concluded that Applicant remains vulnerable to pressure, coercion, exploitation, and duress. Applicant has provided no reason to believe that the Judge failed to consider record evidence or that he mis-weighted the evidence.

After reviewing the record, the Board concludes that the Judge 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 national interest to grant Applicant eligibility for a security clearance” is sustainable on this record. Decision at 9. “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).

Order

The Judge’s adverse security clearance decision is AFFIRMED.

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