

KEYWORD: Guideline E

DIGEST: Applicant disregarded security instructions to cease contact with a foreign national. He developed a sexual and financial relationship with her. Although she was married to a member of the U.S. military, Applicant had a child with her. Adverse decision affirmed.

CASENO: 08-08724.a1

DATE: 11/13/2009

DATE: November 13, 2009

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In Re:)	
)	
-----)	ISCR Case No. 08-08724
)	
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 24, 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 hearing. On August 31, 2009, after the hearing, Administrative Judge Claude R. Heiny 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 certain of the Judge’s factual findings are in error; whether the Judge’s application of the pertinent mitigating conditions is in error; 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 systems engineer for a defense contractor. He worked previously for another contractor. The gravamen of the security concerns in Applicant’s case is his relationship with a woman (W), a national of a foreign country (FC).

In the early 2000s, Applicant’s employer sent him on temporary duty (TDY) to a third country, where he met W. They developed a friendship. She returned to FC toward the end of the TDY and, after he returned to the U.S., Applicant sent her \$400. When he informed his security office about the friendship, he was told not to have further contact with her or send her additional money. Decision at 3. Applicant subsequently sent her monetary payments totaling \$10,000. His security office again directed him to have no further contact with W.

Despite his employer’s warning, Applicant saw W again. Over the course of time, they developed a sexual relationship. Applicant was often dilatory in reporting his contacts with her. Although W married a member of the U.S. military, she and Applicant had a child together. Applicant’s conduct with W resulted in revocation of his access to Sensitive Compartmented Information. W currently lives near Applicant in the U.S., and he sees her three to four times a week, providing her approximately \$2,700 a month in support.

The Judge noted aspects of the case that were favorable to Applicant, for example the fact that much of the adverse information came from Applicant’s own self-reporting. However, the Judge also noted that this reporting was often delayed and that Applicant continued the relationship with W after being told to terminate it. The Judge concluded that, because Applicant continues to see W in visiting with his child, the stressors which resulted in the relationship are still present. Accordingly, he concluded that Applicant cannot, under the circumstances, be found to have mitigated the security concerns arising from his relationship with W.

Applicant challenges a number of the Judge’s findings of fact. However, after reviewing the record, the Board concludes that the Judge’s material findings of security concern are supported by substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial evidence is “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.”) Even if the Judge’s findings contain errors, they are not such as would have affected the outcome of the case.

Viewed in light of the record as a whole, the decision expresses “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 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
Chairperson, Appeal Board

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

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