

KEYWORD: Guideline D; Guideline J; Guideline E

DIGEST: Applicant reliance on a sentence in the interview summary is misplaced. The sentence is merely a summary of Applicant's comments, rather than an independent assessment. Adverse decision affirmed.

CASENO: 11-05685.a1

DATE: 07/12/2013

DATE: July 12, 2013

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In Re: )	
)	
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)	
)	
Applicant for Security Clearance )	
_____ )	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 30, 2012, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline D (Sexual Behavior), Guideline J (Criminal Conduct), and Guideline E

(Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On April 30, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein 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**

The Judge found that Applicant has been employed by a Defense contractor for over 25 years. He has held a security clearance for over 30 years, dating back to his employment with a prior contractor. He is married with three adult children. He procured the services of prostitutes approximately 27 times from 2004 to late 2009. He acknowledged this conduct during the course of an interview with another Government agency. He met the prostitutes at massage parlors, strip clubs, etc. Although Applicant acknowledged that his conduct was wrong, the Judge concluded that he minimized its significance. She quoted his testimony at the hearing that many people with security clearances do illegal things, such as driving while intoxicated, without reporting the conduct. "Clearly I violated the law but I don't think not reporting it is an issue here." Decision at 2. He admitted that he had not made his wife or children aware of his interaction with prostitutes. Applicant enjoys a good reputation for being an industry leader and for his trustworthiness. His job performance was recently rated "very good." *Id.* at 2-3.

### **The Judge's Analysis**

The Judge concluded that Applicant's having engaged the services of prostitutes raised security concerns under each of the Guidelines alleged in the SOR. She concluded that he had failed to mitigate these concerns because he had not admitted the misconduct to his family, thereby raising a possibility that he could be subjected to coercion, exploitation, or duress. In the whole-person analysis, the Judge noted evidence that Applicant had worked in the Defense industry for a long time and had held a clearance for many years without incident or concern. However, she stated that his long familiarity with security rules and regulations aggravated the seriousness of his misconduct. She stated that he had failed to provide sufficient evidence of remedial action that would convince the Government that he will refrain from this misconduct in the future.

### **Discussion**

Applicant disagrees with many of the Judge's statements. He denies, for example, that he had attempted to minimize the significance of his behavior. However, the challenged comment is a reasonable characterization of Applicant's presentation at the hearing.<sup>1</sup> He cites to evidence favorable to him, such as

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<sup>1</sup>"Clearly, I was wrong in this. Clearly, I violated the law but I don't think not reporting it is an issue here. I think that I did report it and I wasn't under a polygraph when I reported it. I reported it in discussions with the operator of the polygraph and reported the issues and indicated that I have done this stuff . . . I didn't give it much consideration when I was doing it. Yes, I knew that picking up a prostitute or going to a strip club or going to a massage parlor and paying for sex was illegal. I didn't in any way at all think that it would impact my security clearances . . . Yes, I shouldn't have done it but I don't see where there's a requirement that I should have immediately ran to security and said . . . I just had a date with a prostitute." Tr. at 41-43.

his having held a clearance for many years without incident or concern. This was evidence the Judge was bound to consider, along with all the other evidence in the record. A Judge is presumed to have considered all of the evidence in the record, and we find nothing in her treatment of Applicant's case that would rebut that presumption. *See, e.g.*, ISCR Case No. 10-08192 at 2 (App. Bd. Oct. 4, 2012).

Applicant also cites to various things, such as the passage of time since his last security-significant acts and evidence that senior managers at his place of employment are aware of his misconduct. He argues that he has demonstrated mitigation. We have considered Applicant's arguments in light of the record. We find no reason to disturb the Judge's application of the mitigating conditions or of the whole-person factors. Among other things, evidence that Applicant has not informed his family about his interaction with prostitutes suggests the extent to which he remains subject to coercion. *See, e.g.*, ISCR Case No. 02-00578 at 3 (App. Bd. Apr. 6, 2004) (Failure to inform family about extramarital affairs and prostitution activity left the applicant vulnerable to blackmail). Applicant cites to a statement at the end of his interview summary to the effect that there is nothing that could be used to blackmail him. He argues that this represents the investigator's assessment of his case. However, the sentence in question is a summary of Applicant's comment during his interview rather than an independent opinion by the investigator. *See, e.g.*, ISCR Case No. 10-09595 at 2 (App. Bd. Feb. 3, 2012).

The Judge examined the relevant data 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, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

### Order

The Decision is AFFIRMED.

Signed: Jean E. Smallin

Jean E. Smallin  
Administrative Judge  
Member, 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