

KEYWORD: Guideline F

DIGEST: Each case must be decided on its own merits. Adverse decision affirmed.

CASENO: 09-07478.a1

DATE: 11/24/2010

DATE: November 24, 2010

In Re:)	
)	
-----)	ISCR Case No. 09-07478
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

D. Michael Lyles, Esq., Department Counsel

FOR APPLICANT

James W. Green, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On March 8, 2010, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant

requested a decision on the written record. On August 13, 2010, after considering the record, Administrative Judge Carol G. Ricciardello 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 her application of the pertinent mitigating conditions. Consistent with the following discussion, we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant is a 62-year-old employee of a Federal contractor. He owes 19 delinquent debts, which include a court judgment, credit card debts, and bank loans. The total amount of Applicant's delinquent debts is approximately \$331,116. Applicant had owned two retail stores, which experienced significant drops in business. He used credit cards to purchase inventory and pay bills. He also took out a bank loan to pay the interest on his credit cards.

Applicant had overdue tax debts for personal income tax and for business tax. He filed his 2006, 2007, and 2008 Federal income tax returns in August 2009. He filed state income tax returns for these same tax years later in 2009.¹ In an effort to address his financial problems, Applicant liquidated some retirement accounts and took out a second mortgage on his home. He has also attempted to sell a time-share.

Applicant did not provide corroboration for his claim that he had made responsible business decisions. He did not explain why he had failed to pay his taxes.

Applicant filed for Chapter 7 bankruptcy protection. The bankruptcy action was continuing as of the close of the record.

In the Analysis portion of the decision, the Judge noted that Applicant had taken certain actions to live within his means, such as working two jobs. However, she also stated that, insofar as Applicant's case was decided on the written record, she did not have the opportunity to question him about his business practices in order to evaluate the extent to which his economic problems resulted from causes outside his control or from his own actions. She stated that his failure to have filed tax returns undercut his efforts to demonstrate that his business practices had been sound. She also noted that while bankruptcy is a legal means of resolving debt, it does not necessarily indicate a good-faith effort to pay off debts. Accordingly, she denied Applicant a security clearance.

In support of his appeal Applicant submits evidence not contained in the record, including documents showing his discharge in bankruptcy, certificates that he had received financial counseling, and charts showing the monthly sales at his stores. We cannot consider new evidence on appeal. *See* Directive ¶ E3.1.29. ("No new evidence shall be received or considered by the Appeal Board"). *See also* ISCR Case No. 08-05379 at 2 (App. Bd. Sep. 15, 2010).

¹Applicant's tax issues were not alleged in the SOR.

Applicant cites to a case by the Hearing Office, which he contends supports his case for reversal of the Judge's decision. We give due consideration to this case. However, each case must be decided upon its own merits. Directive, Enclosure 2 ¶ 2(b). Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. *See* ISCR Case No. 06-24121 at 2 (App. Bd. Feb. 5, 2008). The case cited by Applicant has significant factual differences from his own, notably in terms of the number and amounts of delinquent debts at issue. The case cited by Applicant does not demonstrate that the Judge erred in her application of the mitigating conditions.

The record supports a conclusion 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 adverse 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).

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