

KEYWORD: Guideline E

DIGEST: The Judge's conclusion that Applicant's actions demonstrate poor judgment, unreliability and dishonesty are sustainable in light of the record. Adverse decision affirmed.

CASENO: 07-01466.a1

DATE: 04/30/2008

DATE: April 30, 2008

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In Re:)	
)	
-----)	ISCR Case No. 07-01466
)	
)	
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 July 24, 2007, 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 January 18, 2008, after the hearing, Administrative Judge Juan J. Rivera denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's failure to mitigate the Guideline E security concerns is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge found that Applicant had shoplifted at least eight times during the last 15 years. The incidents included the taking of a duplicate key in 2002, the taking of a set of scuba lenses in 2003, and the failure to accurately report to cashiers all the items that had been selected for purchase. Additionally, Applicant had received and kept furniture he had not paid for. At the hearing, Applicant had recanted his answers to previous interrogatories, and had provided information not provided either during a prior interview by a government agent or in his answers to interrogatories.¹

The Board has examined the Judge's decision in light of the record as a whole. The Judge's conclusion that "[Applicant's] actions show poor judgment, unreliability, dishonesty, and an unwillingness to comply with rules and regulations" is sustainable.² Furthermore, the Judge has drawn "a rational connection between the facts found" under Guideline E and his adverse decision. *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 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). Accordingly, the Judge's adverse decision is neither arbitrary, capricious, nor contrary to law.

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

¹Decision at 6.

²*Id.*

Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board