

KEYWORD: Guideline F; Guideline J

DIGEST: Applicant was arrested twice for assault and has numerous delinquent debts. Applicant's criminal conduct caused or threatened to cause harm to others, yet she did not express remorse. It was not clear from the record that Applicant's apparent inability to hold long-term employment was the result of a condition beyond her control. The Judge's adverse conclusions are sustainable. Adverse decision affirmed.

CASENO: 08-03432.a1

DATE: 06/10/2009

DATE: June 10, 2009

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In Re:)	
)	
-----)	ISCR Case No. 08-03432
)	
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 August 20, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 18, 2008, after the hearing, Administrative Judge Joan Caton Anthony denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: whether the Judge’s findings are supported by substantial record evidence; whether the Judge erred in failing to mitigate the security concerns raised in Applicant’s case; and whether the Judge’s adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant has been arrested twice. The first incident occurred in 1995, when she was charged with assaulting a police officer.¹ The case was dismissed before trial as a *nolle prosequi*. The second incident occurred in 2006. Applicant was arrested for reckless endangerment, first degree assault, second degree assault, and theft of property valued at less than \$500.² She pled guilty to second degree assault and to theft. The court imposed probation before judgement, her probation period being three years. Applicant has numerous delinquent debts, beginning in 2001. Her security clearance application listed 23 “employment activities” between 1994 and 2007. Decision at 3. Concerning the Guideline F security concerns, the Judge stated that Applicant’s “employment history shows short-term employment and periods of unemployment. It was not clear from the record that Applicant’s apparent inability to hold long-term employment was the result of a condition beyond her control. She admitted that the delinquencies alleged on the SOR remained unresolved, resulting in substantial debt which continues to the present day, a situation which raises concerns about Applicant’s good judgment.” *Id.* at 7. As regards Guideline J, the Judge noted that Applicant’s conduct caused or threatened to cause harm to others, yet she did not express remorse.

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.”) Applicant contends that the Judge erred in finding that she had committed the offenses listed under Guideline J. She states that the fact that the cases were resolved without formal convictions means that she did not commit the alleged misconduct.

¹“Applicant was driving in traffic. A police officer, who was directing traffic, gave her hand signals indicating where she should drive. She ignored the officer’s instructions. Another officer then followed her in a police car and signaled for her to pull over. She did not immediately comply. When she finally stopped, an officer came to her vehicle and banged on the window and signaled her to get out of her car. When she came out of her car, she cursed the officer. Applicant was arrested, taken into custody, and charged with Assault Police Officer.” Decision at 2.

²Applicant was pulled over by police because her license plate was not properly attached to her car. In checking Applicant’s information in the police database, the officer who stopped Applicant learned that an arrest warrant had been issued for Applicant . . . The warrant had been issued because in January 2006 she had hit an automobile dealer’s employee with her automobile and left the premises.” *Id.* at 2-3.

However, “the fact that criminal charges were dropped, dismissed, or resulted in an acquittal does not preclude an Administrative Judge from finding an applicant engaged in the conduct underlying those criminal charges.” ISCR Case No. 99-0119 at 2 (App. Bd. Sep. 13, 1999). After reviewing the record, the Board concludes 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 decision that “it is not clearly consistent with national security to grant Applicant eligibility for a security clearance” is sustainable on this record. Decision at 10. *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 D. Hipple

Michael D. Hipple
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