

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant submitted new evidence on appeal, which the Board cannot consider. Applicant has not demonstrated that the Judge’s decision is arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 08-04599.a1

DATE: 06/15/2009

DATE: June 15, 2009

In Re:)	
)	
-----)	ISCR Case No. 08-04599
)	
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 November 6, 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 E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. The Guideline E allegations were withdrawn at the hearing. On April 7, 2009, after the hearing, Administrative Judge Charles D. Ablard denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28

and E3.1.30.

Applicant raises the following issue on appeal: 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 filed for Chapter 13 bankruptcy protection in 2001. The petition was dismissed in 2003. The reason for the bankruptcy filing was Applicant's having fallen behind in his mortgage payments. His in-laws subsequently purchased the house and assumed the payments. Applicant has numerous other delinquent debts for such things as consumer purchases, loans, etc. Applicant states that his financial problems arose due to his "irresponsibility." Decision at 3. Applicant's annual salary is \$52,000 and his wife's is \$32,000. The Judge concluded that, as Applicant has been employed for over four years without resolving most of his debts, "he has failed to act responsibly" in regard to them. *Id.* at 5.

In support of his appeal Applicant has submitted new matters not contained in the record, which the Board cannot consider. *See* Directive ¶ E3.1.29. ("No new evidence shall be received or considered by the Appeal Board"). *See also* ISCR Case No. 08-06518 at 2 (App. Bd. Mar. 3, 2009). Applicant contends that certain government exhibits assert facts that are not true. Even if Applicant is correct, he has provided no basis to conclude that the Judge's findings of fact are erroneous or that he mis-weighted the evidence. (*See* Directive ¶ E3.1.32.1, explaining the meaning of substantial record evidence; and ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007) for discussion of the standard of review pertinent to a Judge's weighing of the evidence.)

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 7. *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: 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