

On November 30, 2006, after the hearing, Administrative Judge Erin C. Hogan denied Applicant's request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant has raised the following issues on appeal: whether the Judge's factual findings were based upon substantial evidence; and whether the Judge's adverse clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following findings of fact: Applicant is an electronics technician for a defense contractor who has held a security clearance since 1992. From 1996 until 2002, Applicant worked for a contractor in the office of a government agency.

In November 2001, workers in Applicant's branch were asked to clean out a space previously occupied by a worker who had since retired. Among the items cleared out were tool cabinets and tools. The government employee in charge of equipment storage advised the workers that if they wanted any of the tools, to take them, since they would otherwise be thrown out. Applicant and his branch chief each took a tool cabinet. They transported the cabinets to their homes by means of a government van, doing so on company time rather than their off-duty hours. Applicant also took tools, such as pliers, socket drivers, screwdrivers, wrenches, a flashlight, and electrical tape, etc.

In December 2001, Applicant was interviewed about the incident. He admitted taking the property and returned it. His access to Secret Compartmentalized Information (SCI) was terminated, and he was fired from his job.

In May 2003, Applicant was interviewed by a member of the Defense Security Service (DSS). He stated in part that when he took the tool cabinet, he thought "that it would go to government auction and be auctioned off, so I was trying to sidestep that procedure. I thought the only thing I was doing wrong was side stepping the excess procedure. I know I did wrong, I apologized to the investigator and other government officials when the items were returned, as well as my boss." Decision at 4, quoting Government Exhibit 2.

Subsequently, in his answer to the SOR, Applicant stated, "The items I took were marked for excess. It was later explained to me by a family member that the items needed to be taken to a disposal unit on the base and removed from the agency's books and then they could offer it up for public auction. I only found out about this procedure after I had removed the items that were being excessed." Decision at 5, quoting Answer to SOR.

During his testimony, Applicant acknowledged that, in his 2001 interview, he did not state that the equipment manager had authorized him to take the government property. He stated that he did not want to get the person in trouble. He also stated that at the time he did not believe that the property was actually going to be thrown away. Decision at 5.

We have examined the Judge's findings in light of the record as a whole and conclude that they are based upon substantial evidence. See Directive ¶ E3.1.32.1; *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620-21 (1966). Therefore, we resolve the first assigned error adversely to Applicant.

Regarding the second assigned error, we note that, in analyzing the case, the Judge considered not only the underlying misconduct but also Applicant's various statements about his state of mind when taking the property. In that regard, the Judge observed, "Applicant's inconsistent statements pertaining to his knowledge of procedures for disposing of excess equipment raise credibility issues. His testimony that he initially did not mention the equipment manager's name to the security investigators because he did not want to get her into trouble indicates that he had some knowledge that taking the tools and tool cabinet home was questionable." Decision at 8. The Judge concluded that Applicant had not met his burden of persuasion that it is "consistent with national security" for him to have a clearance. *Id.* See *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). See also Directive ¶ E3.1.15. ("The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision").¹

In light of the above, we conclude that the Judge has articulated "rational connection between the facts found" and her ultimate adverse clearance decision. See *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)). Accordingly, we hold that her decision is not arbitrary, capricious, or contrary to law.

¹The Judge's analysis is consistent with other record evidence, such as Applicant's testimony that his employer would not have approved of his delivering the property to his home on company time.

Q: So in other words you falsified your time cards?

A: I guess so, yes. Tr. at 68.

Order

The Judge's decision denying Applicant a clearance 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