

KEYWORD: Guideline F; Guideline E; Guideline G;

DATE: August 2, 2007

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 04-09750
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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 September 14, 2005, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct), Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended)(Directive). Applicant requested a hearing. On January 23, 2007, after the hearing, Administrative Judge Wilford H. Ross denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge’s decision was arbitrary, capricious, or contrary to law. Because Applicant fails to establish error on the part of the Judge, the Board affirms the Judge’s decision.

On appeal, Applicant cites as specific error the Judge's finding that Applicant has no current plans to pay a \$25,000.00 debt to his ex-wife. Applicant asserts that the record evidence shows that a sale of real property currently in progress indicates his intent to address the debt. Applicant then asserts more generally that his plan to pay off or reduce his debts by selling off parcels of real property are legitimate repayment plans and are therefore mitigating. Applicant specifically references one debt in the amount of \$177,201.11 (his largest debt) and states that the debt is largely accrued interest and can therefore be reduced through negotiations to a much smaller amount. Applicant also indicates that his obligation on this particular debt is moral rather than legal since the statute of limitations has past.

In this case, the Judge made sustainable findings that Applicant has a history of delinquent indebtedness of which he has been aware for at least ten years, he owes 39 different creditors approximately \$252,675.00, and he has real property assets of a value that exceeds the amount of his indebtedness, but which, until very recently, Applicant did not want to sell. The Judge concluded that Applicant's attitude, historically, appeared to be that as long as his assets were more than his indebtedness, he was "all right." This conclusion is reasonably supported by the record evidence.

In terms of mitigation, the Judge acknowledged that Applicant recently sold two pieces of property for a total of \$10,000.00, which he applied to an outstanding judgment of approximately \$20,000.00. The Judge also noted that Applicant is in the process of selling a third piece of real property for approximately \$40,000.00, which will enable him to pay off the rest of the judgment and to eliminate all but his two largest debts. Nevertheless, the Judge concluded that Applicant's debts and history of past due indebtedness had not been mitigated. The Judge stated that there was little likelihood that Applicant's creditors would get paid in the foreseeable future, and Applicant's recent sale of two properties and the expected sale of a third did not rise to the level of a good-faith attempt to repay creditors or otherwise resolve the debts.

The Judge reasonably explained why the evidence which Applicant had presented in mitigation was insufficient to overcome the government's security concerns. The favorable record evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 02-28041 at 4 (App. Bd. Jun. 29, 2005). The record supports the Judge's ultimate unfavorable clearance decision under Guideline F. Moreover, the Judge also made formal findings adverse to Applicant under Guidelines E and J of the Directive, and these formal findings provide additional bases for the Judge's overall unfavorable security clearance decision. On appeal, Applicant does not challenge the Judge's adverse findings and conclusions under Guidelines E and J.

Order

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

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board Guideline J

DIGEST: On appeal, Applicant does not challenge the Judge's adverse findings and conclusions under Guidelines E and J. The record supports the Judge's unfavorable conclusions under Guideline F. Adverse decision affirmed.

CASENO: 04-09750.a1

DATE: 08/02/2007