

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant amassed over \$250,000 of unpaid debt between 1998 and 2004. The debt was unpaid as of the hearing. The Judge’s adverse decision is neither arbitrary capricious nor contrary to law. Adverse decision affirmed.

CASENO: 06-24121.a1

DATE: 02/05/2008

DATE: February 5, 2008

)	
In Re:)	
-----)	ISCR Case No. 06-24121
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

James R. Klimaski, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On March 15, 2007, 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. On September 12, 2007, after the hearing, Administrative Judge Juan J. Rivera denied Applicant's request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse security clearance decision is arbitrary, capricious, and contrary to law.¹ Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant amassed over \$250,000 of debt from 1998 to 2004. This debt was unpaid as of the date of the hearing. Applicant's financial problems were rooted in some bad business decisions. However, in the Conclusions section of his opinion, the Judge stated that these bad decisions reflect poorly upon Applicant's judgment. For example, Applicant loaned a substantial amount of money to a person suffering from "alcohol, mental, and personal problems" (Decision at 7) and continued to do so even after this person in effect repudiated an intention to repay.² The Judge further stated that Applicant had "failed to live within his means, that his irresponsible spending caused his excessive indebtedness, and that he does not have the ability to pay his delinquent obligations." Decision at 7.

In support of his appeal, Applicant points to other decisions, by the Appeal Board and by the Hearing Office, which he argues support his request for a favorable determination. The Board gives them due consideration. However, each case "must be decided upon its own merits." Directive ¶ E2.2.3. Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. *See* ISCR Case No. 06-05903 at 3 (App. Bd. Oct. 15, 2007).

We have reviewed the Judge's conclusions in light of his unchallenged findings of fact. We conclude that the Judge has drawn "a rational connection between the facts found" and his ultimate adverse decision. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). *See also 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)). (A Judge is required to "examine the relevant data and articulate a satisfactory explanation for" the decision, "including a 'rational connection between the facts found and the choices made'"); "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, we hold that this decision is neither arbitrary, capricious, nor contrary to law. *See* Directive ¶¶ E3.1.32.3 and E3.1.33.3.

¹The Judge's favorable decision under Guideline E is not at issue.

²Applicant testified that this person "had some . . . very severe family legal problems . . . Q: So at the time that you were agreeing to advance him money to help in family situations, he was unemployed; is that correct? A: He was either unemployed or would get a job and lose it. But whatever the situation was, I needed to help him, and I needed to pay for my own living expenses. So that was what the money was used for . . . Q: Now, you have not collected anything from him as of yet; is that correct? A: Not a penny, sir . . . [this person] wrote a letter in November 2002 . . . a very long letter in which he said that, in effect, he didn't even know who I was." Tr. 130 - 132. Applicant further testified that he had begun loaning money to this person in 1998 and finally stopped doing so in October 2004, nearly two years after this letter. Tr. at 132 - 133.

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