

KEYWORD: Guideline J

DIGEST: Although some of Applicant’s convictions were set aside, it was not due to insufficient evidence of guilt. Judge had a reasonable basis to conclude that Applicant had failed to mitigate the security concerns in his case. Adverse decision affirmed.

CASENO: 07-04866.a1

DATE: 09/23/2008

DATE: September 23, 2008

In Re:)	
)	
-----)	ISCR Case No. 07-04866
)	
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 September 28, 2007, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 30, 2008, after the hearing, Administrative Judge David M. White 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 issues on appeal: whether certain of the Judge’s findings of fact are supported by substantial record evidence, and whether the Judge’s adverse security clearance decision is erroneous. Finding no error, we affirm.

The Judge made sustainable findings that Applicant had been arrested and convicted of multiple offenses, including auto theft, leaving the scene of an accident, Driving While Intoxicated (DWI), larceny, producing marijuana, and disorderly conduct. Some of the convictions were set aside, though for reasons other than insufficient evidence of guilt.¹ The most recent offense, in September 2005, was for a second offense of DWI. As a result of this incident he was sentenced to 90 days in jail (87 days suspended), a \$3,000 fine (\$1,500 suspended), and probation until June 2009.

The Board has examined the Judge’s decision in light of the record as a whole. The Judge has drawn a rational connection between the facts found and his ultimate adverse security clearance 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)). The Judge’s decision that “it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance” is sustainable on this record. Decision at 7. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). In support of his appeal, Applicant submitted new evidence not contained in the record, which the Board cannot consider. “No new evidence shall be received or considered by the Appeal Board.” Directive ¶ E3.1.29.

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

¹Applicant served as an undercover informant for the police. Some of his convictions were set aside due to this cooperation with law enforcement. Decision at 3. *See also* Tr. at 47-53.

Member, Appeal Board