

KEYWORD: Guideline F; Guideline B

DIGEST: Although Applicant's financial problems were related to his wife's gambling habit, which was not within his control, he failed to demonstrate that his response to his debts was reasonable. Adverse decision affirmed.

CASE NO: 07-10841.a1

DATE: 08/24/2009

DATE: August 24, 2009

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In Re:	)	
	)	
-----	)	ISCR Case No. 07-10841
	)	
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 December 17, 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 B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 27, 2009, after the hearing, Administrative Judge Wilford H. Ross denied Applicant's request for a security clearance. Applicant appealed 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 arbitrary, capricious, or contrary to law.<sup>1</sup> Finding no error, we affirm.

The Board has examined the Judge’s factual findings and concludes that they are based upon substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.”) For example, Applicant contends that he is not in debt in an amount in excess of \$100,000 as the Judge stated. This finding of the Judge is located in the Analysis portion of the decision. It is supported by Government Exhibits 2 and 8, Credit Reports; by testimony adduced at the hearing; and by Applicant’s response to the SOR. Even if the Judge’s statement were erroneous, it would be harmless, viewed in light of record evidence that Applicant has significant delinquent debt. *See, e.g.*, ISCR Case No. 01-23362 at 2 (App. Bd. Jun. 5, 2006); ISCR Case No. 03-09915 at 4-5 (App. Bd. Dec. 16, 2004); ISCR Case No. 01-11192 at 4-5 (App. Bd. Aug. 26, 2002).

The Judge gave due consideration to evidence that Applicant’s indebtedness was caused in large measure by his wife’s gambling habit, which suggests that the debts originated from causes outside his control. However, the Judge also concluded that Applicant had not demonstrated a reasonable response to the debts.<sup>2</sup> He further concluded that Applicant had not demonstrated that his financial problems are being resolved or that he had initiated a good-faith effort to pay off his debts.<sup>3</sup> The Judge’s conclusions are sustainable.

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 the national interest to grant Applicant eligibility for a security clearance” is sustainable on this record. Decision at 10. *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

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<sup>1</sup>The Judge’s favorable findings under Guideline F, paragraph 1(g), and under Guideline B are not at issue in this appeal.

<sup>2</sup>*See* Directive ¶ E2.20(b): “[T]he conditions that resulted in the financial problem were largely beyond the person’s control . . . and the individual acted responsibly under the circumstances[.]”

<sup>3</sup>*See* Directive ¶¶ E2.20(c), (d): “[T]he person has received or is receiving counseling . . . and/or there are clear indications that the problem is being resolved[;]” “[T]he individual initiated a good-faith effort to repay overdue creditors[.]”

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