

KEYWORD: Guideline F

DIGEST: Applicant's case is distinguishable from the Appeal Board case cited by Applicant. In the current case Applicant's financial problems are due to his own poor choices including financial misconduct. Adverse decision affirmed.

CASENO: 08-09406.a1

DATE: 03/19/2010

DATE: March 19, 2010

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In Re:)	
)	
-----)	ISCR Case No. 08-09406
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Samuel Bluck, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On March 20, 2009, 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 October 29, 2009, after the hearing, Administrative Judge Martin H. Mogul denied Applicant’s request for a security clearance. Applicant appealed 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, or contrary to law. Finding no error, we affirm.

The Judge found that Applicant had numerous delinquent debts. Applicant engaged the services of a credit counseling firm, which has established a plan to pay off Applicant’s debts over a five year period. Applicant attributed his financial difficulties to poor choices and immaturity while he served in the U.S. Air Force. At one time he considered filing for bankruptcy, although he had not done so at the close of the record.

In 2006, Applicant was administratively discharged from the U.S. Air Force. The reason for the discharge was a pattern of misconduct, including incidents of failure to go to his appointed place of duty, dereliction of duty, failure to maintain sufficient funds to cover checks, false statements about his financial condition, and failure to inform his supervisor about his financial condition. These incidents had resulted in administrative counselings, a letter of reprimand, etc. Applicant received a General Discharge Under Honorable Conditions.¹ This is the basis for the Guideline E security concern.

Applicant contends that he has demonstrated responsible behavior regarding his debts, citing a decision of the Appeal Board which, he argues, supports his case. He also cites to certain decisions by the Hearing Office to similar effect. Regarding the Guideline E security concern, he contends that the misconduct for which he was discharged from the Air Force was minor in nature and that he had demonstrated rehabilitation.

We have given due consideration to the Appeal Board case described in Applicant’s brief. However, we conclude that it is distinguishable from Applicant’s. In the prior case, the debts resulted from a business downturn, which was outside the applicant’s control. In the case under consideration here, however, Applicant’s financial problems were due to his own poor choices. Indeed, the discharge from the Air Force was based in substantial measure upon willful misconduct, including financial misconduct. Additionally, while we give due consideration to the Hearing Office cases cited by Applicant, they are also distinguishable from this case and, in any event, are not binding precedent. *See* ISCR Case No. 06-24121 at 2 (App. Bd. Feb. 5, 2008). We conclude that these cases do not demonstrate that the Judge’s adverse decision under Guideline F was in error.

¹A General Discharge Under Honorable Conditions is authorized under the following circumstance: “If an airman’s service has been honest and faithful, this characterization is warranted when significant negative aspects of the airman’s conduct or performance outweigh positive aspects of the airman’s military record.” Air Force Instruction 36-3208, *Administrative Separation of Airmen*, July 9, 2004, ¶ 1.18.2.

Concerning Guideline E, the record supports the Judge’s conclusion that Applicant had failed to demonstrate mitigation. His pattern of misconduct included financial wrongdoing. His ongoing financial problems, and the Judge’s finding that he had failed to resolve most of his significant debts, undermine a claim of rehabilitation. Furthermore, the offenses for which Applicant was administratively discharged are not uniformly minor in nature.² Therefore, we conclude that the Judge did not err in his treatment of this Guideline.

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 adverse decision is sustainable on this record. “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).

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairperson, Appeal Board

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

Signed: James E. Moody
James E. Moody

²See Government Exhibit 16, Letter of Reprimand, August 23, 2005, which formed part of the basis for the discharge. “You wrote checks to make payments on 9 payday loans which you were delinquent on and you had 11 checks returned for non-sufficient funds. You admitted to me that when you wrote those checks . . . you knew you did not have the money in the account to cover the checks. Additionally, you lied to [SSgt A, MSgt B, and CMSgt C] when questioned about your financial situation. Your intent was to deceive us so we did not learn of your true financial status.”

Administrative Judge
Member, Appeal Board