

KEYWORD: Guideline F

DIGEST: Applicant’s failure to file federal and state tax returns raised Guideline F security concerns. Matters which Applicant submitted in his behalf were not sufficient to meet his burden of persuasion. Adverse decision affirmed.

CASENO: 04-11768.a1

DATE: 07/22/2009

DATE: July 22, 2009

In Re:)	
)	
-----)	ISCR Case No. 04-11768
)	
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 July 22, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On April 23, 2009, after the hearing, Administrative Judge Shari Dam 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 not filed federal income tax returns for tax years 2005 through 2007 and that he had not filed state tax returns for 2006 or 2007. She also found that his federal return for 2004 and his state tax returns for 2004 and 2005 were not filed until 2008. The Judge considered the matters Applicant submitted in his case for mitigation but concluded that he had failed to meet his burden of persuasion. After reviewing the record, the Board concludes that the Judge has articulated a rational explanation for the adverse decision. *See 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 clearly not consistent with the interests of national security to grant Applicant eligibility for a security clearance" is sustainable on this record. Decision at 9. *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

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan

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

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board