

KEYWORD: Guideline E; Guideline J

DIGEST: The Board concludes that the Judge has drawn a rational connection between the facts found and her ultimate adverse decision. Adverse decision affirmed.

CASENO: 04-12680.a2

DATE: 12/27/2007

DATE: December 27, 2007

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 04-12680
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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 August 3, 2005, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as

amended) (Directive). Applicant requested a decision on the written record. On August 31, 2006, after considering the record, Administrative Judge Shari Dam granted Applicant's request for a security clearance. Department Counsel filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30. On May 21, 2007, the Board remanded the case to the Judge. On September 27, 2007, the Judge issued a remand decision, this time denying Applicant a security clearance. Applicant filed a timely appeal in accordance with the Directive.

Applicant raised the following issue: whether the Judge's application of the relevant Guideline E mitigating conditions was arbitrary, capricious, or contrary to law. Finding no error we affirm.

The Judge made the following pertinent findings of fact: In 2001 Applicant was arrested for DUI and for negligent operation of a vehicle. He was acquitted of the DUI but convicted of the other charge. A month later he was arrested for operating a vehicle without a license. In completing the Security Clearance Application (SCA) in this case, Applicant answered "no" to questions inquiring (a) whether he had ever been charged or convicted of any offense related to alcohol and (b) whether he had ever been arrested, charged, or convicted of any offense not otherwise listed in the SCA. The Judge concluded that Applicant's denial of intentional falsification was not credible.

We have reviewed the Judge's decision in light of the record as a whole. We conclude that the Judge has drawn "a rational connection between the facts found" and her 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.

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