

KEYWORD: Guideline F; Guideline E; Guideline J

DIGEST: The Judge noted that Applicant had paid off the vast majority of his delinquent debts. Applicant listed an unpaid judgement on his application. Applicant reasonable explained his confusion regarding his medical bills. The record evidence provides a rational basis for the Judge's favorable decision.

CASENO: 06-18535.a1

DATE: 12/04/2007

DATE: December 4, 2007

In Re:)	
)	
-----)	ISCR Case No. 06-18535
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

Gary A. Matthews, Esq., Arnold J. Janicker, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 22, 2006, DOHA issued a statement of reasons advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations), 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 hearing. On July 18, 2007, after the hearing, Administrative Judge Marc E. Curry granted Applicant's request for a security clearance. Department Counsel filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issues on appeal: whether the Judge's application of Guideline F mitigating conditions is arbitrary, capricious, and contrary to law; and whether the Judge's favorable conclusions under Guidelines E and J are arbitrary, capricious, and contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant served in the U.S. Air Force from 1987 through 1991. After his discharge, he worked for defense contractors and for a hospital staff, performing information systems implementation. In 1998 he started a consulting firm. Although adept at marketing his business and at customer service, Applicant was less so at managing his firm's finances and fell into debt. Since starting his business, his health coverage has been "sporadic" and he has had difficulty distinguishing those bills that were the responsibility of his insurance provider and those that were to be paid by him.¹ He also has owed a substantial amount of money for state taxes. When asked on his security clearance application (SCA) whether he had delinquent debts of 180 days and 90 days respectively, Applicant answered in the negative. This answer was untrue, in light of several medical debts and a state tax lien.

In deciding favorably for Applicant under Guideline F, the Judge noted that Applicant has paid off the vast majority of his delinquent debts. Furthermore, he has hired an accountant to manage his finances, leaving Applicant to operate his business, which has grown considerably. The Judge concluded that Applicant had met his burden of persuasion under FCMC 6.² This conclusion is consistent with a reasonable interpretation of the record evidence³ and is neither arbitrary, capricious, nor contrary to law.

Additionally, the Board has considered the Judge's analysis of whether Applicant intentionally falsified his SCA. The Judge noted that, while Applicant did not list his tax debt under questions 38 and 39, he did list it in response to question 36, which inquired as to the existence of any liens against him. Moreover, Applicant reasonably explained that he was confused as to which medical bills were his responsibility and which were those of his insurance provider, which supports the Judge's conclusion that his answers to the questions at issue were made in good faith, even if they were erroneous. The Board also notes that Applicant listed an unpaid judgement against him in response to question 37, which further supports the Judge's conclusion that Applicant was not intending to deceive. Applicant's answers, viewed as a whole, do not demonstrate an intent to hide his difficulties. The record evidence provides a rational basis for the Judge's favorable decision. That decision is neither arbitrary, capricious, nor contrary to law.

¹Decision at 3.

²Directive E2.A6.1.3.6. "The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

³*See, e.g.*, the accountant's favorable opinion of the long range prospects for Applicant's business. Tr. at 242.

Order

The Judge's favorable security clearance decision is AFFIRMED.

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, 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