

KEYWORD: Guideline J

DIGEST: Even though eleven years had elapsed between the last criminal act and the date of the decision, the Judge was unable to conclude that Applicant had mitigated the security concerns in his case. The Judge's decision is sustainable, given the extent of Applicant's criminal record. Adverse decision affirmed.

CASENO: 06-25219.a1

DATE: 08/11/2008

DATE: August 11, 2008

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| In Re: |) | |
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| ----- |) | ISCR Case No. 06-25219 |
| |) | |
| Applicant for Security Clearance |) | |

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Sheldon I. Cohen, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security

clearance. On April 2, 2007, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 12, 2008, after the hearing, Administrative Judge Edward W. Loughran denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in his application of the Guideline J mitigating factors; and whether his adverse security clearance decision was arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact:

Applicant is an employee of a defense contractor and a recovering heroin addict. He began using and distributing marijuana in high school. He also began distributing heroin while in high school and used heroin for the first time near the end of his senior year. He used heroin more and more, to the point of daily use, and became an addict. When Applicant could no longer supply his habit by distributing drugs, he began committing other criminal activity. “He was arrested on more than 35 occasions between 1980 and 1994, for offenses including burglary, breaking and entering, grand larceny, probation violation, receiving stolen property, assault, shoplifting, theft, armed robbery, and numerous drug-related charges.” Decision at 3. He served 35 months in the state penitentiary for his offenses. His last use of heroin was in 1997, when he turned himself in to authorities for a probation violation, *i. e.*, having failed a probation office drug test. Since that time, Applicant has been clean and sober. He has attended Narcotics Anonymous and has received degrees from respected universities. He has a support system and has been “universally praised by family, friends, co-workers, and supervisors as honest, hard working, [and] trustworthy . . .” Decision at 5.

In evaluating Applicant’s case, the Judge gave consideration to the time period he had been clean and sober and the other evidence of rehabilitation. However, he balanced that against the length and seriousness of Applicant’s criminal history. The Judge concluded that Applicant’s “drug and criminal record is so extensive, that even almost eleven years later, I am unable to state that it is clearly consistent with the national interest to grant him a security clearance.” Decision at 8. Applicant argued that the Judge should have given more weight to his evidence of rehabilitation. However, a review of the entire record demonstrates that the Judge has drawn a rational connection between the facts found and his ultimate adverse security clearance decision, both as regards to the pertinent mitigating conditions and the whole-person analysis. *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)). The Judge’s decision that “it is not clearly consistent with the interest of national security to grant Applicant eligibility for a security clearance” is sustainable on this record. Decision at 9. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael D. Hipple
Michael D. Hipple
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