



Guideline M (Misuse of Information Technology Systems) and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested that the case be decided on the written record. On March 19, 2008, after considering the record, Administrative Judge Joseph Testan denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse clearance decision is arbitrary, capricious or contrary to law. Finding no error, we affirm.

The Judge made the following relevant findings: Applicant is a 52-year-old employee of a defense contractor. Applicant was fired by Employer A in 2000 for continued violations of the company's internet policy; namely, viewing sexually explicit websites on his company computer. He had previously been counseled about viewing pornographic websites on his company computer during duty hours.

While working for Employer B in 2001, Applicant accessed and viewed pornographic websites, and downloaded material from those websites, during work hours. His employer never found out about this activity, which was prohibited by company policy.

In 2002, Applicant was counseled by Employer C about his need to work on government contracts instead of accessing pornographic websites on the company computer. He received this counseling after it was determined he had downloaded approximately 145 pornographic videos onto his computer. After this counseling, his computer activities were monitored by his employer without his knowledge. He was subsequently observed accessing pornographic websites and was fired.

Applicant falsified material facts on an Electronic Questionnaire for National Security Positions (EQNSP) he executed in March 2006 when he lied about the reasons he was fired by Employers A and C. He lied because he was afraid that if he revealed he was fired for viewing pornography on company computers, it might adversely affect his security clearance.

Applicant also lied about the reason he was fired from Employer C during an interview with an OPM investigator in August 2006. He lied because he was afraid that if he told the truth, it could adversely affect his security clearance.

In a signed, sworn statement he gave to a Special Agent of the Defense Security Service (DSS) in September 2007, Applicant stated that he could not state "with 100% certainty" that he would not access pornographic websites at his place of employment. In response to the government's File of Relevant Material (FORM), Applicant stated that following his termination from Employer C, he promised his wife that he "would not risk losing employment by improperly using company assets to access pornography at any future work place." He further stated, "This promise is the main reason I have been successful in only using IT systems as allowed by the rules of the organization in which I worked since August 2002." He also stated that he has recently started counseling on his "pornography problem."

On appeal, Applicant argues that his disqualifying conduct and falsifications were “isolated to this particular process,” and resulted from his embarrassment and fear. Because those events “are now in the open and there is no longer any reason for [him] to conceal them,” he requests that the Judge’s adverse decision be reversed. Applicant has not demonstrated that the Judge erred.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. In this case, Applicant admitted to the allegations in the SOR with explanation. He elected to have his case decided on the written administrative record and then filed a one-page response to the government’s FORM. As a result, the Judge did not have an opportunity to question him about his conduct and omissions, and evaluate his credibility in the context of a hearing.

The Board has examined the Judge’s decision in light of the record as a whole and concludes that the Judge has drawn a ‘rational connection between the facts found’ under Guidelines E, M and J and his adverse decision. *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 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). Given the limited record that was before him, the Judge’s unfavorable clearance decision is not arbitrary, capricious nor contrary to law. See Directive ¶ E3.1.32.1.

### **Order**

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

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

Signed: Michael D. Hipple  
Michael D. Hipple  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields  
William S. Fields

Administrative Judge  
Member, Appeal Board