

KEYWORD: Guideline E; Guideline F

DIGEST: Applicant has numerous delinquent debts. He denied owing the money but provided no corroboration. Applicant falsely answered no to two questions on his security clearance application. Adverse decision affirmed.

CASENO: 07-17189.a1

DATE: 02/24/2009

DATE: February 24, 2009

In Re:)	
)	
-----)	ISCR Case No. 07-17189
)	
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 June 20, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the

basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 17, 2008, after the hearing, Administrative Judge Rita C. O’Brien 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’s application of the Guideline F and E mitigating conditions was erroneous and whether the Judge’s adverse security clearance decision was arbitrary, capricious, or contrary to law.¹ Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is 42 years old. He served in the U.S. Navy from 1985 to 2006, retiring as a Chief Petty Officer. He is a security manager for a defense contractor.

Applicant has numerous delinquent debts, for such things as car loans, credit card accounts, consumer purchases, etc. The Judge noted that, while Applicant denied that he owed them, claiming they had been previously paid off or challenging their legitimacy, he provided no documentation in corroboration.² Additionally, Applicant answered “no” to several questions on two different security clearance applications (SCA) concerning his financial history.³ These answers were not true.

The record demonstrates that the Judge considered appropriate mitigating conditions, holding in favor of Applicant as to several of the Guideline F allegations. However, she concluded that Applicant had failed to meet his burden of persuasion as to the remaining allegations under both Guidelines F and E. *See* Directive ¶ E3.1.15. She noted that Applicant earns a “substantial salary,” yet nevertheless allowed his delinquent debt to accrue. Decision at 6. Her conclusion that Applicant had failed to demonstrate that his financial problems arose from causes outside his control is sustainable on this record.⁴ She also noted the multiple nature of the false statements and the relative recency of at least two of them. In light of the record as a whole, the Judge has drawn a rational connection between the facts found and her ultimate adverse security clearance decision, both as regards the mitigating conditions and the whole-person factors. *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 interests of

¹The Judge found in Applicant’s favor under subparagraphs 1(g), (l - m), and (o). These allegations are not at issue in this appeal.

²The total amount of the debts forming the basis of the Judge’s adverse findings under Guideline F exceeds \$34,000.00.

³The SOR alleged six falsifications contained in SCAs executed in 2004 and in 2008. These concerned the existence of tax liens, unpaid judgements, debts delinquent more than 180 days, and debts delinquent more than 90 days. Applicant denied each of these allegations and the Judge found against him on each one.

⁴*See* Directive ¶¶ E2.17(c) and 20(b).

national security to allow Applicant access to classified information” is sustainable on this record. Decision at 10. *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’”). In support of his appeal Applicant has submitted new matters not contained in the record, which the Board cannot consider. *See Directive ¶ E3.1.29.* (“No new evidence shall be received or considered by the Appeal Board”).

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Jean E. Smallin

Jean E. Smallin
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