

KEYWORD: Guideline E; Guideline F; Guideline J

DIGEST: In view of Applicant's failure to follow through with earlier promises to pay off certain debts and his falsification of material facts about his financial difficulties, Judge's conclusion that Applicant failed to mitigate security concerns is sustainable. Adverse decision affirmed.

CASENO: 08-02269.a1

DATE: 05/08/2009

DATE: May 8, 2009

In Re:)	
)	
-----)	ISCR Case No. 08-02269
)	
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 10, 2008, DOHA issued a statement of reasons (SOR) 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 decision on the written record. On January 27, 2009, after considering the record, Administrative Judge Joseph Testan denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's analysis of the pertinent mitigating conditions was erroneous. Finding no error, we affirm.

The Judge found that Applicant had numerous delinquent debts, for student loans, automobile loans, consumer purchases, etc. In addition, Applicant was convicted of Obtaining Cash or Merchandise by Bogus Check. The court sentenced him to be fined and to pay restitution. When completing his SCA, Applicant failed to list this conviction as required. Additionally, he answered "no" to questions about financial delinquencies in excess of 180 days and 90 days respectively. These answers were untrue.

Applicant has submitted new matters not contained in the record, including copies of cashier's checks made out to his creditors and recent copies of his credit reports. The Board cannot consider this new evidence. *See* Directive ¶ E3.1.29. ("No new evidence shall be received or considered by the Appeal Board"). *See also* ISCR Case No. 08-06518 at 2 (App. Bd. Mar. 3, 2009). The Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *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 national security to grant Applicant eligibility for a security clearance" is sustainable on this record. Decision at 8. *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'").

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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board