

KEYWORD: Guideline F; Guideline E

DIGEST: The Board does not review a case de novo. Nor does it have authority to grant a clearance on a conditional or probationary basis. Adverse decision affirmed.

CASENO: 08-03258.a1

DATE: 03/09/2009

DATE: March 9, 2009

In Re:)	
)	
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)	ISCR Case No. 08-03258
)	
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 September 29, 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). However, the Guideline E allegation was subsequently withdrawn. Applicant requested a hearing. On December 23, 2008, after the hearing, Administrative Judge Mark W. Harvey denied Applicant's request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant's appeal brief contains no explicit assertion of harmful error on the part of the Judge. Rather, Applicant asks the Board to review her case *de novo* and grant her a clearance under the whole person concept. In support of her request she states that if the Board grants her a clearance she will be able to pay off her outstanding debts. Otherwise, her financial situation will be set back three to five years.

A review of the decision indicates that the Judge conducted an evaluation of Applicant's case under the whole person factors. Decision at 8-9. He examined the relevant data and articulated a satisfactory explanation for his 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 Board does not review cases *de novo*. Nor does it have authority to grant a clearance on a conditional or probationary basis. See ISCR Case No. 04-04302 at 5 (App. Bd. Jun. 30, 2005); ISCR Case No. 02-23805 at 3 (App. Bd. Mar. 9, 2005). Finally, the adverse impact an unfavorable decision may have on an applicant is not a relevant or material consideration in evaluating his security eligibility. See ISCR Case No. 03-21012 at 4 (App. Bd. Aug. 31, 2005); ISCR Case No. 03-19002 at 4 (App. Bd. May 5, 2005). Accordingly, the Judge's adverse clearance decision is sustainable.

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: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board