

KEYWORD: Guideline F

DIGEST: The Judge’s conclusion that Applicant should have been aware of the incredible risks involved in becoming a “straw buyer” for three homes in foreclosure and the Judge’s conclusion that Applicant’s judgment was swayed by the temptation of easy money are supported by the record. Adverse decision affirmed.

CASENO: 08-05216.a1

DATE: 06/10/2009

DATE: June 10, 2009

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In Re:)	
)	
-----)	ISCR Case No. 08-05216
)	
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 November 7, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On April 8, 2009, after the hearing, Administrative Judge Erin C. Hogan denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether Applicant was denied due process and whether the Judge erred in her application of the pertinent mitigating conditions. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a budget analyst for a Defense contractor. She has a degree in business administration and is a licensed real estate agent. Applicant and her husband filed for chapter 7 bankruptcy, her debts being discharged in 1999.

In 2006, while surfing the internet, Applicant discovered a website offering real estate transactions involving the purchase of “distressed properties” prior to foreclosure. These properties were owned by people whose credit ratings were poor, but who had substantial equities in their homes. Due to their poor credit ratings, these homeowners could not refinance their mortgages. The website offered prospective third-party customers the opportunity to purchase the properties as “straw buyers.” The homeowners would remain in their homes and pay rent and were promised that, after a year, during which they had improved their credit scores, they would be able to reacquire their homes. In his turn, the “straw buyer” was promised that the company who owned the website would pay the mortgages on the properties and would pay the “straw buyer” \$5000 per home.

The transactions turned out to be fraudulent. Once a home was titled in the “straw buyer’s” name, the company refinanced the property and kept the equity. “When the company ultimately sold the home, stopped making the mortgage payments, and/or pursued an eviction proceeding, the victim homeowner was left without the home, equity, or repaired credit. The straw buyers were left with a mortgage or mortgage(s) that were pending foreclosure.” Decision at 3. Applicant agreed to be a “straw buyer” for three homes, each of which is in foreclosure. Applicant is working with the banks holding the mortgages, attempting to resolve this dilemma, though at the close of the record the problem is ongoing. Applicant’s supervisor, former supervisors, and co-workers praise her job performance, integrity, and trustworthiness. Aside from the mortgages, Applicant is financially stable.

The Judge stated that, though unaware that the contracts were fraudulent, Applicant “should have conducted more due diligence before entering into the agreement. Even before the fraud was disclosed, she should have been aware of the incredible risks involved in using your good credit history in an agreement that involved individuals (distressed homeowners) with poor credit . . . [H]er judgment appears to have been swayed by the temptation of easy money . . . At the close of the record, the status of the three mortgages and what effect, if any, the mortgage fraud case will have

on Applicant is unknown;. Doubts remain about Applicant’s reliability, trustworthiness, and good judgment.”¹ *Id.* at 6-7.

Regarding the alleged due process violation, Applicant states that the hearing was interrupted three times by a person who claimed to have business with the Judge, making Applicant lose her train of thought. She also states that she felt rushed during the hearing. The Board has examined the record and finds no reason to conclude that Applicant was impaired in her opportunity to present her side of the case or that she was otherwise deprived of the due process provided by the Directive. *See* ISCR Case No. 08-03110 at 2 (App. Bd. Jan. 27, 2009). After reviewing the record, 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: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

¹Applicant’s situation is distinguishable from the one in which a fraud victim’s choices and judgment were reasonable on their face. *See, e.g.*, ISCR Case No. 07-15321 (App. Bd. Dec. 15, 2008).