

KEYWORD: Guideline F

DIGEST: To the extent that Applicant's appeal does not rely on impermissible new evidence it is ambiguous. Applicant was advised in writing of her procedural rights and opportunities with a File of Relevant Material. Adverse decision affirmed.

CASENO: 08-05348.a1

DATE: 04/02/2009

DATE: April 2, 2009

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In Re:)	
)	
-----)	ISCR Case No. 08-05348
)	
)	
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 July 31, 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 decision on the written record. On January 30, 2009, after considering the record, Administrative Judge Henry Lazzaro 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 certain of the Judge’s findings of fact are supported by substantial record evidence; and whether the Judge’s unfavorable security clearance decision is arbitrary, capricious, and contrary to law. Finding no error, we affirm.

The Judge found Applicant is 29 years old and had two bankruptcies dismissed in 2006. Applicant filed for bankruptcy in May 2008 and reports that she is currently making payments. The Judge noted the lack of corroborating evidence or evidence to show that Applicant had conducted herself in a responsible manner.

We have examined the Judge’s decision in light of the record as a whole. The Judge’s material findings of security concern are supported by substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.”) In support of her appeal, Applicant asserts that she provided all the information requested and “was advised not to provide more information than requested.” Arguably his claim constitutes new evidence not contained in the record, which the Board cannot consider. “No new evidence shall be received or considered by the Appeal Board.” Directive ¶ E3.1.29. However, to the extent that we can consider the claim, it is ambiguous. There is no indication as to whether the advice was alleged to have come from an employee of DOHA. In any case, a review of the record shows that Applicant was sent a copy of the record to be considered by the Judge, along with a cover letter dated November 7, 2008, which advised her that “Before the file is sent to the Administrative Judge, you have an opportunity to review the attached copy of the complete file and to submit any material you wish the Administrative Judge to consider or any objection you may have to the attached file material.” It also said “If you do not file any objections to the attached material or submit any additional information within 30 days of receipt of this letter, your case will be assigned to an Administrative Judge for a determination based solely on the attached file of relevant material.” The record demonstrates that Applicant submitted no objections or additional information. Her case was processed accordingly. The record provides no basis to conclude that Applicant was denied the due process afforded by the Directive.

The Judge has drawn a rational connection between the facts found and his ultimate adverse security clearance decision. *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 national interest to grant or continue a

security clearance for Applicant” is sustainable on this record. Decision at 6. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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