

KEYWORD: Guideline F; Guideline J; Guideline G; Guideline E

DIGEST: Applicants assertions regarding his omissions on two security clearance applications do demonstrate error by the Judge. Adverse decision affirmed.

CASENO: 08-07803.a2

DATE: 01/07/2010

DATE: January 7, 2010

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 08-07803
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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 January 9, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 15, 2009, after the hearing, Administrative Judge Michael H. Leonard denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30, and Department Counsel subsequently cross-appealed pursuant to Directive ¶ E3.1.28. The Appeal Board remanded the case for a new decision on September 21, 2009. The Judge issued a new decision on October 22, 2009, in which he again 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 adverse security clearance decision is arbitrary, capricious, or contrary to law.¹

The Judge found that, on two different security clearance applications, Applicant provided false answers concerning his prior illegal drug use. The Judge concluded that Applicant’s answers were deliberately false and that, viewed in light of the entire record, Applicant had failed to mitigate the Guideline E security concerns.

Applicant asserts that omissions concerning drug use on security clearance applications completed by him in 2005 and 2007 were the result of oversight. Applicant’s assertions do not establish error on the part of the Judge.

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge’s decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes that the Judge 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 general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Therefore, the Judge’s ultimate unfavorable security clearance decision under Guideline E is sustainable.

¹The Judge made findings in Applicant’s favor under Guideline F, Guideline J and Guideline G. Those findings are not at issue on appeal.

Order

The Judge's adverse security clearance decision is affirmed.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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