KEYWORD: Guideline F

DIGEST: The Board does not have authority to waive provisions of the Directive. Adverse decision affirmed.

CASENO: 08-08012.a1

DATE: 11/20/2009

DATE: November 20, 2009

In Re:	)	
	)	
------	)	ISCR Case No. 08-08012
	)	
	)	
Applicant for Security Clearance	)	
	)	

APPEAL BOARD DECISION

<u>APPEARANCES</u>

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On April 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) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 31, 2009, after the hearing, Administrative Judge Mark Harvey 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 the Judge erred in his application of the mitigating conditions and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge found that Applicant had significant delinquent debt, arising in large measure from real estate transactions. Applicant had purchased a number of properties at tax sales, in 2001 owning fifteen. However, he experienced financial problems associated with the properties, arising, *inter alia*, from poorly performed repairs and from Applicant's separation from his wife. He attempted to sell some of them, but he was unable to find buyers who would pay the prices he desired. Although the Judge resolved some of the allegations in Applicant's favor, he concluded that Applicant had failed to meet his burden of persuasion as to six mortgage debts, totaling around $262,592. He noted that these debts had been delinquent "for a substantial period of time." Furthermore, Applicant "has not paid anything to these six creditors in the past several years." Decision at 13. The Judge concluded that Applicant's financial situation reflected poorly upon his judgement.

In support of his appeal, Applicant points to decisions by the Hearing Office which he argues support his request for a favorable determination. The Board gives due consideration to these cases. However, each case "must be decided upon its own merits." Directive ¶ E2.2.3. Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. *See* ISCR Case No. 06-24121 at 2 (App. Bd. Feb. 5, 2008). Applicant requests that the Board waive the one-year bar on reapplication mandated by Directive ¶ E3.1.37. The Board does not have authority to waive provisions of the Directive. *Compare* ISCR Case No. 04-01961 at 2-3 (App. Bd. Jul. 12, 2007); ADP Case No. 07-06039 at 3 (App. Bd. Jul. 8, 2008).

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 the national interest to grant or continue Applicant eligibility for a security clearance" is sustainable on this record. Decision at 14. "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).

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

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