

KEYWORD: Guideline F

DIGEST: The government need not wait until an applicant mishandles or fails to safeguard classified information before it can deny access to such information. Adverse decision affirmed.

CASENO: 08-09918.a1

DATE: 10/28/2009

DATE: October 28, 2009

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In Re:)	
)	
---)	ISCR Case No. 08-09918
)	
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Carl E. Maas, Personal Representative

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On April 10, 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 17, 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 certain of the Judge's findings of fact are supported by substantial record evidence; whether the Judge's application of the pertinent mitigating conditions is erroneous; and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is an executive for a federal contractor. He has previously worked for another federal contractor after retiring as an officer in the U.S. Air Force. He has held a security clearance for 30 years.

Applicant has numerous delinquent debts for such things as medical bills, credit cards, and a real estate mortgage. His second marriage ended in divorce in 2006. The two were having financial problems during their marriage. The divorce decree required Applicant to pay child and spousal support. These obligations were still in effect at the close of the record. Applicant filed for Chapter 7 bankruptcy protection, but the petition was dismissed because his income exceeded the filing threshold. In the Analysis portion of the decision, the Judge noted the effect which Applicant's divorce had exerted on his financial condition, his employment history, and his having held a security clearance for 30 years. However, she concluded that Applicant had not taken adequate steps to resolve his financial problems until recently, which impugned his good judgement and reliability.

Applicant contended that the Judge's factual findings contain errors. For example, he challenged the Judge's statement that Applicant had experienced financial problems at the end of his second marriage. However, after reviewing the record, the Board concludes that the Judge's material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. In particular, Applicant's divorce decree, admitted as Applicant Exhibit F, supports the Judge's statement about Applicant's financial condition. Applicant has not identified any harmful error likely to change the outcome of the case. Considering the record evidence as a whole, the Judge's material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007).

In support of his appeal, Applicant has provided new evidence not contained in the record, including evidence that he had paid off certain debts. The Board cannot consider this new evidence. *See* Directive ¶ E3.1.29. ("No new evidence shall be received or considered by the Appeal Board"). *See also* ISCR Case No. 08-06518 at 2 (App. Bd. Mar. 3, 2009). Applicant's appeal points to his good security record, which the Judge noted in her decision. This does not demonstrate that the decision is arbitrary, capricious, or contrary to law. The federal government need not wait until an applicant actually mishandles or fails to safeguard classified information before it can deny or revoke access to such information. *See Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969). The absence of security violations does not bar or preclude an adverse security clearance decision. *See* ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005).

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 interests to grant Applicant eligibility for a security clearance” is sustainable, in light of the *Egan* standard. Decision at 11; *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
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