

KEYWORD: Guideline F

DIGEST: The Judge's material findings of security concern are supported by substantial record evidence. Adverse decision affirmed.

CASENO: 08-12167.a1

DATE: 07/16/2010

DATE: July 16, 2010

In Re:	)	
	)	
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	)	ISCR Case No. 08-12167
	)	
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 August 12, 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), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On April 20, 2010, after the hearing, Administrative Judge Mary E. Henry 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 were supported by substantial record evidence and whether the Judge’s adverse security clearance decision was arbitrary, capricious, or contrary to law.<sup>1</sup> Finding no error, we affirm.

The Judge found that Applicant failed to provide information relevant to the processing of his application for a clearance. These omissions concerned: (1) several arrests for alcohol-related conduct; (2) a bankruptcy action; (3) alcohol treatments while in the Army; and (4) information about delinquent debts. Applicant was aware of his responsibility to provide the information. He admitted that he did not do so due to concern that he could lose his security clearance. The Judge concluded that Applicant had failed to mitigate the security concerns arising from his deliberate omissions.

Applicant contends that the Judge erred in finding that he had been arrested for criminal offenses four times during 2002. He states that two of the incidents involved merely the issuance of citations rather than actual arrests. We have examined the Judge’s findings in light of the record as a whole. The challenged findings are supported by Applicant’s admissions to the SOR. Even if erroneous, they are not likely to have affected the outcome of the case. Therefore, any error is harmless. *See* ISCR Case No. 08-07528 at 2 (App. Bd. Dec. 29, 2009). Considering the record evidence as a whole, the Judge’s material findings of security concern are supported by substantial evidence and are sustainable. *See, e.g.*, ISCR Case No. 07-13491 at 2 (App. Bd. Jul. 18, 2008). *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.”)

Applicant’s appeal brief cites to record evidence of his good work performance. However, a Judge is presumed to have considered all of the record evidence. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009). Applicant’s brief has not rebutted that presumption. In support of his appeal, Applicant has submitted evidence not contained in the record, *e.g.*, information concerning his post-hearing conduct. We 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. 08-06875 at 2 (App. Bd. Oct. 29, 2009).

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<sup>1</sup>The Judge’s favorable findings under Guidelines F and J are not at issue in this appeal.

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 adverse decision is sustainable on this record. “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: Jean E. Smallin

Jean E. Smallin  
Administrative Judge  
Member, 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