

KEYWORD: Guideline F

DIGEST: The prior Appeal Board decision cited by Applicant is factually distinguishable from this case. Adverse decision affirmed.

CASENO: 09-03427.a1

DATE: 02/19/2010

DATE: February 19, 2010

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In Re:)	
)	
----)	ISCR Case No. 09-03427
)	
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Samuel Bluck, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 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 November 23, 2009, after the hearing, Administrative Judge Rita C. O’Brien 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. Finding no error, we affirm.

The Judge found that Applicant is employed as a senior avionics technician for a Defense contractor. He served in the U.S. Marine Corps from 1983 to 1987. Married, he has two stepdaughters. He also has two sons from a previous marriage.

Applicant’s SOR listed two delinquent debts. The first, \$6,412, is owed on a retail store credit card. Applicant and his then-girlfriend used the card to purchase a computer. When the couple broke up, the girlfriend kept the computer. The debt became delinquent, and the store sought payment from Applicant, as he was the primary account holder for the card. The store obtained a judgment against Applicant for the balance of the debt, which was unpaid at the close of the record.

In 2003 or 2004 Applicant purchased a motorcycle. He had reconciled with his first wife, but, soon after the purchase, he moved out of the house where they were living. He had not driven the motorcycle and had made only one payment on it. He proposed that the seller take back the motorcycle, with Applicant paying the depreciation as compensation. However, the seller did not accept this proposal, instead repossessing the vehicle and selling it, charging Applicant with the \$11,242 deficiency. Applicant has refused to pay that amount, believing that the seller, by transporting the vehicle to another state for the sale, did not reasonably mitigate the damages. This debt was unpaid at the close of the record.

Applicant has approximately \$1,000 left over each month after expenses. At the close of the record he had about \$500 in savings and \$8,300 in his checking account.

In support of his appeal, Applicant has cited a prior decision by the Board, which, he contends, supports his case for mitigation. We have considered this case, concluding that it is factually distinguishable from Applicant’s. He also cites to cases by the Hearing Office in support of his appeal. The Board gives due consideration to these cases as well. However, each case “must be decided upon its own merits.” Directive ¶ E2.2.3. 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).

After reviewing the record, we conclude 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