

KEYWORD: Guideline F

DIGEST: Applicant attributes his financial problems to an overseas lottery “scam.” He continued to participate in the activity and believes he may receive \$500,000. Adverse decision affirmed.

CASENO: 10-01024.a1

DATE: 06/24/2011

DATE: June 24, 2011

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In Re:)	
)	
-----)	ISCR Case No. 10-01024
)	
)	
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 19, 2010, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On March 31, 2011, after considering the record, Administrative Judge Juan J. Rivera 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 finding that he had deliberately falsified his security clearance application (SCA) and whether the Judge’s adverse security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge’s decision.

The Judge made the following pertinent findings of fact: Applicant is a 78-year-old senior logistician employed by a Defense contractor. Her served in the U.S. Navy, retiring in 1977. Applicant and his wife raised five children, one of whom is a Navy captain. A grandson is a midshipman at the U.S. Naval Academy. Applicant worked for a Government contractor from 2001 until at least December 2010.¹ He stated that he had access to classified information since 1999.

The SOR lists three debts. Two of them are for charged-off credit cards. Applicant used these cards to pay for such things as travel and vacations, gifts, cash advances, and gambling. The third Guideline F allegation pertains to a mortgage debt. Applicant claimed to have communicated with the mortgage holder requesting a settlement. However, he presented no corroboration. Applicant has a monthly gross income of \$8,000. His personal financial statement discloses \$754,000 and \$88,000 owed on two real estate mortgages, \$14,000 on past-due federal income taxes, and \$3,000 on a car note.

In his security clearance interview, Applicant stated that his financial problems were the result of his participation in a “lottery scam.” Decision at 3. Since 2007, he had been sending money to recipients in Jamaica and had received “winnings” by checks in amounts ranging from \$9,000 to \$22,000. However, some of these checks were not honored and he acquired debt. He believes that he has spent over \$100,000 on this scam. Despite Applicant’s characterization of the activity as a scam, he was still voluntarily participating in it as of December 2009. Applicant advised that some of the cash advances he had charged on his credit cards were used to participate in this scam.²

¹Item 4, Applicant’s SCA, states, at Section 13a, that Applicant had been employed by a Government contractor from March 2001 until the present.

²See Item 5, Subject Interview: “In late 2007 [Applicant] became involved in what he describes as a lottery scam. He received mail and phone calls offering him millions in possible winnings. He could not recall the name of the company . . . He began sending money to various people, in Jamaica, who requested the money . . . He received payments back from \$9000.00 to \$22,000.00. The checks were deposited directly in his [Bank] account or went directly into his [Bank] charge card. The checks were later cancelled by whoever sent them. He has continued to [receive] requests for additional money with promises of great rewards. He continues to send money to these individuals even

Applicant advised that he believes that the people running this scam are going to pay him for the checks they failed to honor. “He claimed to have the financial means [to] pay all of his delinquent debts; however, he is waiting for the lottery people to pay what they owe him. He believes he may receive \$500,000 because he recently received a letter from the general counsel to the United Nations advising him of that fact.” Decision at 3.

In completing his SCA, Applicant was required to disclose whether, during the preceding seven years, he had defaulted on any loan; had debts turned over to a collection agency; had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; had been over 180 days delinquent on any debt; and whether he was currently 90 days delinquent on any debt. He answered “no” to these questions. These answers were false, in light of the debts alleged in the SOR. His failure to list these three debts was deliberate.

In the Analysis portion of the Decision, the Judge stated that Applicant had failed to present evidence sufficient to raise any of the Guideline F mitigating conditions. He stated that Applicant has failed to show (1) that his financial problems are unlikely to recur;³ (2) that the circumstances of his debts were outside his control and that he had behaved responsibly;⁴ (3) that his financial problems are under control or are being resolved;⁵ or (4) that he has made a good faith effort to pay his debts.⁶ The Judge also stated that the record, viewed as a whole, supported a conclusion that Applicant’s false answers to the SCA were deliberate.⁷ The Judge considered Applicant’s many years of service to the U.S., both as a member of the military and as a contractor. However, the Judge stated that Applicant’s mitigating evidence was “sparse” and failed to demonstrate that Applicant was worthy of a clearance.

Applicant has presented new evidence in support of his appeal. This evidence includes written communications between Applicant and some of his creditors. We cannot consider this new

though he believes it is a scam.”

³Directive, Enclosure 2 ¶ 20(a): “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment[.]”

⁴Directive, Enclosure 2 ¶ 20(b): “the conditions that resulted in the financial problem were largely beyond the person’s control . . . and the individual acted responsibly under the circumstances[.]”

⁵Directive, Enclosure 2 ¶ 20(c): “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control[.]”

⁶Directive, Enclosure 2 ¶ 20(d): “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]”

⁷“Considering the number and total value of the debts, how the debts were acquired, Applicant’s military service experience, his many years working for a Government contractor, and his experience with the security clearance process, I find Applicant’s claims of innocent mistake are not credible.” Decision at 7.

evidence on appeal. See Directive ¶ E3.1.29. (“No new evidence shall be received or considered by the Appeal Board.”). See also ISCR Case No. 09-03616 at 2 (App. Bd. Mar. 25, 2011).

The record supports a conclusion 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 conclusion that Applicant falsified answers about financial matters on his security clearance application is reasonably supported by the evidence, as is his conclusion that Applicant’s financial delinquencies are of security concern and are unmitigated. 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). See also Directive, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor 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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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