

KEYWORD: Guideline F

DIGEST: The record supports DOHA's jurisdiction in this case. Applicant is seeking a Top Secret clearance. His current clearance is at the Secret level. Under DOD 5220.22M (the NISPOM), DOHA is not barred from adjudicating the case at hand. Adverse decision affirmed.

CASENO: 09-05833.a1

DATE: 06/21/2010

DATE: June 21, 2010

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In Re:)	
)	
-----)	ISCR Case No. 09-05833
)	
)	
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 October 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 March 30, 2010, 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 issues on appeal: whether the Judge erred in her application of the pertinent mitigating conditions and whether the Judge’s whole-person analysis was erroneous. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is an evidence control specialist for a Defense contractor. Prior to that, he worked full time for the National Guard. Married, he has one daughter from a previous marriage and two stepdaughters.

Applicant has substantial delinquent debt. His troubles were affected by a divorce and by medical expenses occasioned by his having had a stroke. Additionally, he is not skilled in financial management. His gross monthly pay is \$3,400 and he has a net remainder of \$502. His debts are for such things as medical bills, utilities, credit cards, retail purchases, and a personal loan. Of the debts alleged in the SOR, Applicant had paid only one by the close of the record, a medical bill in the amount of \$5.00.

In denying Applicant a clearance, the Judge stated:

Applicant has accumulated substantial debts over the past several years. He has not established payment plans, and has not provided evidence that shows efforts to resolve his financial situation. An applicant is not required to be debt-free, or establish that he paid every debt. But he must demonstrate that he has established a plan to resolve his debts and has taken action to implement that plan. Here, Applicant has not established such a plan, and he still carries \$37,000 in debt, with no substantive efforts or reasonable plan to resolve it. Decision at 8.

In support of his appeal, Applicant submits facts not contained in the record, for example information concerning a post-hearing decision to file for bankruptcy. We cannot consider this information. *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); ISCR Case No. 08-06518 at 2 (App. Bd. Mar. 3, 2009). He points to evidence that he has held a security clearance for more than fifteen years without incident or concern and to evidence of the high quality of his duty performance. These are matters which the Judge was bound to consider, along with all of the other record evidence, and indeed a Judge is presumed to have considered all of the evidence. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009); ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008). In this case, however, Applicant has not rebutted this presumption, nor has he demonstrated that the Judge mis-weighed the evidence. *See, e.g.*, ISCR Case No. 06-21819 at 2 (App. Bd. Aug. 13, 2009); ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

To an extent, Applicant's brief can be read as posing a jurisdictional issue. However, the record supports DOHA's jurisdiction in this case. Applicant's existing clearance with the National Guard is at the Secret level. As Applicant acknowledges, he is seeking a Top Secret clearance. DoD 5220.22M (the "NISPOM") § 2-204 governs reciprocity. Applicant's existing National Guard clearance is at a lower level than the clearance sought. Therefore, under the NISPOM, DOHA is not barred from adjudicating the case at hand.

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,'" both as to the mitigating conditions and the whole-person factors. *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 considered evidence which would tend to mitigate Applicant's security concerns, for example the extent to which his financial situation was affected by circumstances outside his control and that he had recently obtained some financial counseling. However, the record evidence, viewed as a whole, supports her conclusion that Applicant had not demonstrated responsible behavior in regard to his debts or a good-faith effort to pay them off. 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: 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