KEYWORD: Guideline F

DIGEST: The Board cannot consider new evidence contained in Applicant's appeal submission. Judge's application of the mitigating conditions was not erroneous. Adverse decision affirmed.

CASE NO: 09-07792.a1

DATE: 05/10/2011

DATE: May 10, 2011

In Re:	)	
	)	
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	)	
	)	
Applicant for Security Clearance	)	
	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Dana D. Jacobson, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 16, 2010, 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 decision on the written record. On February 28, 2011, after considering the record, Administrative Judge Edward W. Loughran 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 the application of the pertinent mitigating conditions and whether the Judge's decision was arbitrary, capricious,

or contrary to law. Consistent with the following discussion, we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant is an employee of a Defense contractor. This is her first application for a security clearance.

Applicant has had financial problems for a number of years. In 2003 her debts were discharged in Chapter 13 bankruptcy. She and her ex-boyfriend were together for 13 years. He handled the finances, although most of the accounts were in her name. In 2006 she discovered that he had not been paying the bills, using their money to purchase his own residence. She could not pay their debts on her salary alone. She filed for Chapter 13 bankruptcy again in November 2006, but it was dismissed the following July.

Applicant experienced unemployment from March 2009 until June 2009. She stated that she was laid off in February 2007, which rendered her unable to make her payments under the Chapter 13 bankruptcy plan. She has seven delinquent debts, unpaid as of the close of the record. In addition, the SOR alleged two past-due mortgages, although one of them had been paid through foreclosure.

In January 2010 Applicant consulted a bankruptcy attorney for a possible Chapter 13 filing. In November 2010 she retained the attorney. The bankruptcy petition had not been filed as of the close of the record.

Applicant enjoys a good reputation for her work performance, trustworthiness, honesty, and loyalty.

In support of her appeal, Applicant submits evidence not contained in the record. This evidence includes her bankruptcy filing. We cannot consider this new 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).

Given the totality of the record evidence, we find no basis to disturb the Judge's application of the mitigating conditions. For example, evidence that Applicant's debts remained delinquent at the close of the record supports the Judge's conclusion that these debts were ongoing. *See, e.g.*, ISCR Case No. 10-03656 at 3 (App. Bd. Jan. 19, 2011). The Judge's conclusion that Applicant had not demonstrated a good-faith effort to pay debts or otherwise demonstrate responsible action in response to her debts is sustainable. 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 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: 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