

KEYWORD: Guideline F

DIGEST: Applicant was discharged in Chapter 7 bankruptcy in 2001. Since then, he has acquired additional delinquent debt, two of which remain delinquent at the time of the hearing. The Judge properly concluded that Applicant was unable or unwilling to satisfy his debts and that he had a history of not meeting his financial obligations. Adverse decision affirmed.

CASENO: 07-17965.a1

DATE: 10/29/2008

DATE: October 29, 2008

_____)	
In Re:)	
)	
-----)	ISCR Case No. 07-17965
)	
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 March 25, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On August 4, 2008, after considering the record, Administrative Judge Juan J. Rivera denied Applicant’s request for a security clearance. Applicant filed a timely appeal 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 was arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is an accountant. He is unmarried and has no children. He encountered financial difficulties in 2001 and filed for Chapter 7 bankruptcy protection. He was discharged in bankruptcy late in the year. Afterward he acquired additional debt which became delinquent. One debt was in the amount of \$6,640. Another was in the amount of \$10,975, and the third was for \$420. Applicant made payments of \$50 to the first two of those debtors. However, those two debts were still delinquent at the close of the record.

The Judge properly concluded that Applicant’s case raised security concerns under Guideline F, specifically that Applicant was unable or unwilling to satisfy his debts and that he had a history of not meeting his financial obligations.¹ The record demonstrates that the Judge considered the appropriate Guideline F mitigating conditions. However, he concluded that Applicant’s delinquent debts, coming close on the heels of his discharge in bankruptcy, precluded favorable application of any of those conditions.² “Applicant did not provide sufficient evidence to establish he acted responsibly and in good faith in the handling of his financial affairs . . . His overall conduct with his creditors casts doubt on his current reliability, trustworthiness, and good judgment.” Decision at 7. For similar reasons, the Judge concluded that Applicant had not met his burden of persuasion under the whole-person factors. Noting that Applicant’s status as an accountant and his recent experience with bankruptcy were sufficient to place him on notice as to the requirements for good financial health, the Judge concluded that the favorable record evidence was not sufficient to demonstrate Applicant’s worthiness for a security clearance.

The Board has examined the Judge’s decision in light of the record as a whole. Applicant chose to have the case decided upon the written record, with the result that his credibility could not be evaluated in the context of a hearing. *See* ISCR Case No. 08-00899 at 3 (App. Bd. Jul. 29, 2008). Additionally, Applicant did not reply to the Government’s File of Relevant Material. Accordingly, the Board concludes that the Judge has drawn a rational connection between the facts found and his ultimate adverse security clearance decision, especially in light of the paucity of mitigating evidence. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). *See also Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington*

¹Directive ¶¶ E2.19(a), (c).

²The Judge did find in Applicant’s favor in regard to the \$420 debt.

Truck Lines, Inc. v. United States, 371 U.S. 156, 168 (1962)). The Judge’s decision that “it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance” for Applicant is sustainable on this record. Decision at 8. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security’”). In support of his appeal Applicant has submitted new matters not contained in the record, which the Board cannot consider. *See Directive ¶ E3.1.29.* (“No new evidence shall be received or considered by the Appeal Board”).

Order

The Judge’s averse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra’anan

Michael Y. Ra’anan
Administrative Judge
Chairman, 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