

KEYWORD: Guideline F

DIGEST: A review of the entire record discloses no basis to conclude that Applicant was denied the rights due him under the Directive. The record does not support a conclusion that the Judge was biased against Applicant. The Judge's findings are supported by the record. Adverse decision affirmed.

CASENO: 08-04464.a1

DATE: 05/08/2009

DATE: May 8, 2009

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**

*Pro Se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On November 10, 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 Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 27, 2009, after the hearing, Administrative Judge Joan Caton Anthony 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 he was denied due process; whether the Judge was biased against him; whether certain of the Judge’s findings of fact were erroneous; and whether the Judge’s adverse security clearance decision is erroneous.<sup>1</sup> Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is an honorably discharged veteran of the U.S. military. He has worked for a government contractor since the mid-2000s. He experienced unemployment several years ago, when he quit his job to care for his ill wife. In addition to unemployment, he has also had “domestic difficulties,” (Decision at 2) resulting from a charge of domestic abuse. While unemployed, he relied on savings to pay living expenses. Applicant has numerous delinquent debts, for credit cards, consumer purchases, medical expenses, etc. Applicant advised creditors of his poor financial circumstances and of his intent to file for bankruptcy protection. He did not file for bankruptcy, however, and, at the close of the record, had an annual income of around \$115,000, with \$29,000 in savings. He has not advised his creditors of his improved economic circumstances. In holding against Applicant, the Judge stated that Applicant has not demonstrated “that he understood his financial responsibilities or how to resolve them. He appear[s] not to understand the basics of keeping track of expenses and budgeting, leading to a conclusion that he could experience financial difficulties in the future. Additionally, he had no plan in place to systematically resolve his delinquent debt and prepare for future contingencies. While his unemployment caused unexpected hardships, he failed to deal responsibly with them.” Decision at 8-9.

Concerning the allegation of a due process violation, Applicant was advised of his right to employ counsel, or to have some other person represent him at the hearing; his right to present evidence and witnesses; his right to cross-examine witnesses against him; and his right to object to evidence. At the hearing, Applicant submitted numerous pieces of documentary evidence; testified in his own behalf, and objected to various documents submitted by the Government. A review of the entire record discloses no basis to conclude that Applicant was denied the rights due him under the Directive or that he had not been adequately advised of those rights. ISCR Case No. 08-03110 at 2 (App. Bd. Jan. 27, 2009). Applicant’s brief, which in part is a denunciation of the Judge, alleges that she was biased against him. There is a rebuttable presumption that a Judge is impartial and unbiased, and a party seeking to overcome that presumption has a heavy burden of persuasion. *See,*

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<sup>1</sup>The Judge’s favorable findings under SOR subparagraphs 1 (m) and (n) are not at issue in this appeal.

*e. g.*, ISCR Case No. 07- 02253 at 3 (App. Bd. Mar. 28, 2008); ISCR Case No. 02-08032 at 4 (App. Bd. May 14, 2004). Applicant’s complaints against the Judge appear, in large measure, to be disagreements with her weighing of the evidence or with her evidentiary rulings. The record does not support a conclusion that Applicant has met his burden of persuasion on this issue.

The Board concludes that the Judge’s material findings of security concern are supported by substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.”) Among other things, Applicant argued that one of the debts alleged in the SOR which the Judge found against him was actually a repetition of another. The Judge’s finding on this matter is a reasonable interpretation of the record evidence. Even if the finding is in error, the error is harmless. Applicant also states that the Judge erred in failing to note that he had been acquitted of the domestic abuse charge. Again, this is at most harmless error. *See* ISCR 01-23362 (App. Bd. Jun. 5, 2006) for discussion of harmless error doctrine. Applicant argues that one of the debts alleged in the SOR is actually his brother’s. However, a review of the record demonstrates that Applicant asked his brother to include Applicant’s name on the account in order to “boost up” Applicant’s credit rating. Tr. at 125. The Judge’s adverse finding on this matter is sustainable.

Applicant states that the Judge did not consider all the record evidence. However, a Judge is presumed to have considered all the evidence, and Applicant has not supplied a basis to rebut that presumption. *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). Applicant’s reliance upon portions of the Adjudicative Desk Reference (ADR) is misplaced. DOHA judges are required to decide cases by using the Adjudicative Guidelines, not the ADR. The ADR itself contains language indicating that it may not be cited as authority for denial or suspension of access. *See, e.g.*, ISCR Case No. 07-02253 at 3 (App. Bd. Mar. 28, 2008).

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.’” *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 decision that “it is not clearly consistent with national security to grant Applicant eligibility for a security clearance” is sustainable on this record. Decision at 10. *See also 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’”).

**Order**

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Chairman, 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