

KEYWORD: Guideline F

DIGEST: The Judge noted the lack of record evidence in mitigation. Adverse decision affirmed.

CASENO: 08-06875.a1

DATE: 10/29/2009

DATE: October 29, 2009

_____)	
In Re:)	
)	
-----)	ISCR Case No. 08-06875
)	
)	
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 February 20, 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 decision on the written record. On August 20, 2009, after considering the record, 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 issue on appeal: whether the Judge’s adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a help-desk technician working for a government contractor. He has held a security clearance since 1998.

Applicant has eleven delinquent debts, totaling \$18,988. Although he claimed to have paid off some of his debts, he provided no documentation in corroboration. “Nothing in the record establishes that Applicant has sought and received consumer credit counseling.” Decision at 3. In concluding that Applicant had not met his burden of persuasion, the Judge noted the lack of record evidence concerning the circumstances giving rise to the debt, as well as a lack of evidence regarding debt repayment. “Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant’s eligibility and suitability for a security clearance.” *Id.* at 6.

In support of his appeal, Applicant submits matters not included in the record. For example, he provides evidence of debt settlement occurring after the date of the Judge’s adverse decision. The Board cannot consider this evidence.¹ See Directive ¶ E3.1.29. (“No new evidence shall be received or considered by the Appeal Board”). See also ISCR Case No. 08-06518 at 2 (App. Bd. Mar. 3, 2009). 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 7. See also *Department*

¹In addition to presenting new evidence, Applicant’s appeal submission is difficult to follow. Applicant presents a document which he proffers as a re-creation of his response to the FORM (No response to the FORM was received by DOHA). The document discusses nine debts. For one debt, of more than \$10,000, Applicant reports having made three or four monthly payments of \$225 in 2008 and then having stopped making payments. He then says, “I do not have any current information regarding this debt. Current status – Debt is paid in full.” Similarly, for the other eight debts he says that no action has been taken to resolve the debts pending his divorce. Nonetheless, for six of the eight debts he then says “Current status – Debt is paid in full.”

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
Chairperson, Appeal Board

Signed: Jeffery D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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