KEYWORD: Guideline F

DIGEST: Applicant failed to mitigate security concerns arising from her delinquent debts. She submitted new evidence on appeal, which the Board cannot consider. The impact an adverse decision will have on her employment is not a relevant consideration. Adverse decision affirmed.

CASENO: 08-07528.a1

DATE: 12/29/2009

DATE: December 29, 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 March 12, 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 September 18, 2009, after considering the record, Administrative Judge Juan J. Rivera 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 certain of the Judge's findings of

fact are supported by substantial record evidence and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge found that Applicant is a senior technical writer for a defense contractor. She holds an advanced degree from a well-known U.S. university. She has been married three times, each ending in divorce. Applicant experienced periods of unemployment prior to her present job.

Applicant has numerous delinquent debts, arising from consumer purchases, credit cards, etc. Some of the debts had been reduced to judgements in favor of the creditors. Most of the debts had been delinquent for many years. Applicant experienced a financial downturn in 2000, due to the decline in the information technology industry. She has enlisted the services of two attorneys to assist her in resolving her financial problems. "She claimed she had been working with a financial counselor to pay her delinquent debts. It is not clear whether she is talking about her attorneys or another financial counselor." Decision at 4. The Judge acknowledged that Applicant's financial problems were affected by her prior unemployment. However, he concluded that she had failed to meet her burden of persuasion as to mitigation. He noted a paucity of record evidence in corroboration of her claims to have paid off certain debts. He also noted an apparent inconsistency in Applicant's explanations for the circumstances underlying one of the debts in the SOR, which is pertinent in an evaluation of her credibility. "The sparse record evidence fails to convince me of Applicant's suitability for a security clearance." *Id*. at 9.

Applicant contends that certain of the Judge's findings are not supported by substantial record evidence. For example, she stated that she had only been divorced twice, her first marriage having ended with an annulment. She also denied having stated that she had a financial counselor other than her two attorneys. To the extent that the challenged findings are error, they are harmless, in that they are not likely to have affected the outcome of the decision. *See* ISCR 01-23362 (App. Bd. Jun. 5, 2006); ISCR Case No. 03-09915 (App. Bd. Dec. 16, 2004); ISCR Case No. 01-11192 (App. Bd. Aug. 26, 2002), for discussion of harmless error. Applicant's brief has not identified any harmful error likely to change the outcome of the case. Considering the record evidence as a whole, the Judge's material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007).

Though acknowledging that the Board cannot consider new evidence, she states that she would be able to produce such evidence if permitted. The Directive does not permit the Board to grant this requested relief. *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); ADP Case No. 08-03721 at 2 (App. Bd. Oct. 28, 2009). Applicant states that a loss of her security clearance will have an adverse impact on her employment. However, the effect that an unfavorable decision may have on an applicant is not a relevant or material consideration in evaluating his or her security eligibility. *See* ISCR Case No. 03-21012 at 4 (App. Bd. Aug. 31, 2005); ISCR Case No. 03-19002 at 4 (App. Bd. May 5, 2005).

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 the national interest to grant or continue eligibility for a security clearance for Applicant" is sustainable on this record. Decision at 9. "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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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