

KEYWORD: Guideline F

DIGEST: Applicant's argument on appeal is not sufficient to demonstrate that the Judge weighed the evidence in a manner that is arbitrary capricious or contrary to law. Adverse decision affirmed.

CASENO: 08-08440.a1

DATE: 09/11/2009

DATE: September 11, 2009

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In Re:	)	
	)	
-----	)	ISCR Case No. 08-08440
	)	
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 January 26, 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 hearing. On June 30, 2009, after the hearing, Administrative Judge John Grattan Metz, Jr., 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 had considered the mitigating evidence which Applicant submitted in his own behalf. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a mail clerk employed by a defense contractor. He has over \$30,000 in delinquent debt, for such matters as medical services, past-due rent, etc. Applicant’s financial problems are “largely attributable to three lengthy periods of unemployment and chronic underemployment.” Decision at 2. Applicant was unemployed from February 2001 to March 2003 as a result of an automobile accident in which he lost his arm. He had other periods of unemployment as well. Applicant contacted his creditors, seeking to make minimal payments on his debts. While most did not respond, “several creditors . . . offered substantial discounts with lump-sum payments by Applicant . . .” *Id.* However, Applicant does not have the resources to pay even these lower amounts. Applicant has a retirement account in the amount of \$5,000, which he plans to withdraw in an effort to pay off some of his debts.

The Judge’s adverse decision noted the effect which unemployment had exerted on Applicant’s financial situation. However, it also noted that Applicant had not sought credit counseling or otherwise demonstrated that his problems were under control.<sup>1</sup> “The problem for Applicant is that he has very little means at present, and appears unlikely to have any greater means in the near future” to begin repaying his creditors. *Id.* at 4. *See, e.g.*, ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008); ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999) for the proposition that intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. Although Applicant contends that the Judge did not consider record evidence favorable to him, or did not accord it proper weight, a Judge is presumed to have considered all the evidence in the record. *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 argument on appeal is not sufficient to overcome that presumption or otherwise to demonstrate that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).<sup>2</sup>

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

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<sup>1</sup>See Directive ¶ E2.20(c): “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control[.]”

<sup>2</sup>The Board also notes significant inconsistencies between Applicant’s security clearance interview and his hearing testimony regarding the reason for his November 2006 job loss. *See* Personal Subject Interview in Government Exhibit 3, Answers to Interrogatories, at 17; Tr. at 40-41.

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 Applicant has not met his burden of persuasion as to mitigation is sustainable on this record. 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.’”).

### **Order**

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Jean E. Smallin

Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board

### **DISSENTING OPINION OF ADMINISTRATIVE JUDGE MICHAEL Y. RA’ANAN**

I cannot join my colleagues’ decision in this case. The Administrative Judge wrote, “[However,] the debts were due to circumstances beyond his control and in some respects he has acted responsibly in addressing his debts within his means.” I believe the record supports that conclusion from the Analysis section of the Judge’s decision. I do not believe that the ultimate adverse disposition of Applicant’s case is appropriate in that light and taking account of the significance of Applicant’s injury and subsequent loss of limb.

Signed: Michael Y. Ra’anan

Michael Y. Ra’anan  
Administrative Judge

Chairman, Appeal Board