

KEYWORD: Guideline B; Guideline F

DIGEST: When Applicant denies an SOR allegation, the government must produce substantial evidence of the truth of the allegation. The government's evidence here included responses to two interrogatories and the credit reports. On this record, the government met its burden. Adverse decision affirmed.

CASENO: 10-03426.a1

DATE: 07/15/2011

DATE: July 15, 2011

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In Re:)	
)	
-----)	ISCR Case No. 10-03426
)	
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

James S. DelSordo, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 26, 2010, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On April 29, 2011, 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 issues on appeal: whether the Government failed to meet its burden of production; whether the Judge’s application of the Guideline F mitigating conditions was erroneous; and whether the Judge’s whole-person analysis was erroneous. The Judge’s favorable findings under Guideline B are not at issue in this appeal. Consistent with the following, we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant is an engineer for a Defense contractor. He is seeking to retain a clearance that he has held since 1998. Applicant has two delinquent debts totaling almost \$198,000. These represent the deficiency balances owed following the short-sale of one investment property and a foreclosed second mortgage from another investment property. Applicant bought these properties in order to take advantage of the real estate boom of the mid-2000s. He intended to sell one of the properties after six months. The other was in default after six or seven months from purchase.

Applicant’s claim to have paid on both mortgages until he exhausted his personal savings was not corroborated. He has provided no corroboration for his claims that the lenders had forgiven the debts or that they intended to do so.

Applicant enjoys a good reputation at his job for reliability and trustworthiness.

In analyzing the case, the Judge concluded that Applicant’s two delinquent debts raised security concerns under Guideline F. He acknowledged that the decline of the housing market was a circumstance beyond Applicant’s control, but he also concluded that Applicant had not demonstrated responsible action in regard to his debts. He noted the lack of evidence to corroborate Applicant’s claims to have been relieved of the deficiency liabilities, concluding that without such evidence he could not find that Applicant’s problems were under control or that he had made a good-faith effort to resolve his debts.

Applicant contends that the Judge erred in concluding that the Government had met its burden of production. He contends that the record evidence demonstrates that Applicant did not owe the deficiency amounts alleged in the SOR.

When an applicant denies an allegation contained in a SOR, the Government must produce substantial evidence of the truth of the allegation. Substantial evidence means “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.” Directive ¶ E3.1.32.1. See ISCR Case No. 08-05637 at 2 (App. Bd. Sep. 9, 2010).

In the case at issue here, the Government’s evidence included Applicant’s responses to two sets of DOHA interrogatories. It also included three Credit Bureau Reports. These exhibits establish the debts alleged in the SOR. Of particular note is Exhibit 2, Interrogatories, dated June 21, 2010, which includes a copy of Applicant’s short-sale agreement with the lending bank. This document states, in pertinent part, the following: “Although [Bank] agrees to release the lien on the referenced account, the Account Holder and [Bank] both agree that any remaining debt is still owed and is collectable.” This document suggests that the lender has not relinquished the right to collect the deficiency for the short sale. As the Judge stated in the Decision, there is no evidence to demonstrate that either debt had been forgiven. Credit Report entries to the effect that these debts had been charged off by the lending institutions do not support a conclusion that the debts had been forgiven. Accordingly, the Government has presented substantial evidence of Guideline F security concerns.

The record supports a conclusion 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,’” both as to the mitigating conditions as well as the whole-person factors. *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 adverse decision is sustainable on this record. “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). See also Directive, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor 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: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board