

KEYWORD: Guideline F

DIGEST: The Government's burden of producing evidence arises only in regard to controverted SOR allegations. It has no such burden regarding those that an applicant has admitted. Applicant admitted all but 7 of the 48 SOR allegations. The Judge resolved some of the controverted allegations for Applicant. The controverted allegations which the Judge found against Applicant were supported by Applicant's credit reports. Adverse decision affirmed

CASENO: 10-03668.a1

DATE: 10/05/2012

DATE: October 5, 2012

In Re:)	
)	
-----)	ISCR Case No. 10-03668
)	
)	
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 December 22, 2010, 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 May 31, 2012, after the hearing, Administrative Judge Wilford H. Ross 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 was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge’s decision.

The Judge made the following pertinent findings of fact: Applicant has a Bachelor’s degree in Information Technology Management and works for a Defense contractor. She seeks to retain a security clearance.

Applicant has numerous delinquent debts, for such things as Federal and state taxes, medical expenses, telephone services, a repossessed car, etc. Her financial problems began around 2004, when she began a two-year period of unemployment due to medical problems. She also suffered a car accident in 2009, which added to her medical difficulties. Applicant contends that she has consolidated and paid most of the medical debts, although she provided no corroboration. She has economized in her lifestyle, by moving to a smaller apartment, leasing a cheaper car, and making other changes that permit a faster repayment of debts. However, the Judge noted that more than a year had elapsed between the issuance of her SOR and the hearing in her case. Nevertheless, Applicant appeared to lack knowledge about many of her debts. Moreover, she provided no evidence about her job performance or character.

In the Analysis, the Judge noted Applicant’s unemployment and medical problems. However, he concluded that she had not demonstrated responsible action in regard to her debts. He characterized her presentation at the hearing as disorganized and her evidence as fragmentary. He stated that she had not received financial counseling. Although Applicant had demonstrated payment of some of her debts, she has not established a track record of financial stability. The Judge resolved certain debts in Applicant’s favor but he concluded that, for the balance of the debts alleged in the SOR, Applicant had not met her burden of persuasion.

Applicant argues that her credit reports did not contain accurate information and that many of the debts were duplicative of one another. To the extent that she is arguing that the Government did not meet its burden of producing evidence of security concern, we note that this burden arises only in regard to SOR allegations that are controverted. Directive ¶ E3.1.14. In a DOHA proceeding, the Government must present substantial evidence of controverted allegations but assumes no such burden regarding those that an applicant has admitted. *See, e.g.*, ISCR Case No. 11-02087 at 3 (App. Bd. Mar. 20, 2012). In the case before us, Applicant has admitted all but 7 of the 48 allegations contained in her SOR. The Judge resolved some of the controverted allegations in Applicant’s favor. Accordingly, those are not relevant to this appeal issue. Those controverted

allegations which the Judge found against Applicant were supported by the contents of Applicant's credit reports, submitted as Government Exhibits 4 through 8. Credit reports are generally sufficient to establish the Government's *prima facie* case of Guideline F security concerns. *See, e.g.*, ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006). Accordingly, the Government has presented substantial evidence of security concerns arising from Applicant's delinquent debts.

Applicant has cited to record evidence of her efforts to pay down her debts and the effect upon her financial situation of personal circumstances that were outside her control. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-06622 at 4 (App. Bd. Jul. 2, 2012). The Judge made findings about the evidence which Applicant cites in her appeal brief, and he discussed this evidence in the Analysis portion of the Decision. However, the Judge plausibly explained why he concluded that Applicant's favorable evidence was not sufficient to mitigate the security concerns in her case, considering the extent of her debts, the dilatory nature of her efforts to address her debts once she obtained employment, and her apparent lack of clear understanding of her financial situation as reflected in her presentation at the hearing. Applicant has not rebutted the presumption that the judge considered all of the record evidence, nor has she demonstrated that the Judge mis-weighed the evidence. Applicant's brief asserts facts from outside the record, such as her having hired a financial counselor. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

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.'" *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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, 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