

KEYWORD: Guideline F

DIGEST: The Judge’s material findings of security concern were supported by substantial record evidence. Applicant failed to rebut the presumption that the Judge considered all of the evidence. Adverse decision affirmed.

CASE NO: 10-01756.a1

DATE: 06/02/2011

DATE: June 2, 2011

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**

Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 19, 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 April 7, 2011, after the hearing, Administrative Judge Jennifer I. Goldstein 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 Judge’s application of the mitigating factors was erroneous and whether the Judge’s whole-person analysis was erroneous.

The Judge's favorable finding under SOR ¶ 1(b) is not at issue in this appeal. Consistent with the following, we affirm the decision of the Judge.

The Judge found that Applicant is an employee of a Defense contractor who has held a security clearance for approximately ten years.

The SOR alleged two debts, only one of which is at issue here. This is \$26,780 due on a mortgage debt in foreclosure at the close of the record. Applicant had bought the house for his fiancée to live in. When they terminated the relationship, she moved out and stopped making payments. Applicant also ceased making payments. According to Applicant, interest rate adjustments caused the payments to increase from \$1,800 to \$4,000 a month. He sought a loan modification, but the request was denied. Applicant then decided to "walk away" from the debt.<sup>1</sup> Decision at 2. He made no attempts to sell the property. It was eventually sold through a foreclosure sale. He has taken no action to investigate the debt or repay it.

Applicant earns \$1,836 twice a month. He has approximately \$11,000 in a savings account and \$7,436 in a checking account. His 401(k) is worth nearly \$101,000.

Applicant enjoys a good reputation for trustworthiness, integrity, and job performance. He has received a certificate of appreciation from his employer for his contribution to a project.

In the Analysis portion of the decision, the Judge stated that Applicant's conduct regarding the mortgage debt was troubling. He made no attempt to make a single payment on the mortgage, has not contacted the creditor since walking away from the debt, and has presented no documentation to demonstrate that the debt was satisfied through foreclosure. Although Applicant has received counseling, the Judge concluded that he had not demonstrated responsible behavior in regard to the debt and had presented nothing to show that his problem is under control. She stated that Applicant "has not shown himself to be reliable, trustworthy, or exercising good judgment." Decision at 6. Accordingly, she denied Applicant a clearance.

Applicant challenges the Judge's statement in the Analysis concerning his not having made a payment on the mortgage. He states that this is not true, that, in November 2007, he attempted to pay \$1,800, but the bank wanted the newly adjusted amount of \$4,000. However, when the Decision is read in the context of the record as a whole, it is clear that the Judge is referring to Applicant's conduct after November 2007. The Judge's material findings of security concern are based upon substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial evidence is "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").

Applicant contends that the Judge failed to consider favorable record evidence, such as his having held a security clearance for ten years without incident or concern, his evidence that he lives within his means, and his evidence of good character and job performance. While these are matters

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<sup>1</sup>"Q: And when you realized that there was nothing you could do to refinance the house or short sell the house, what did you do at that point? A: I just, you know, like a lot of people did and have done in this country, they had to walk away from it." Tr. at 40.

which the Judge was required to consider, along with all of the other evidence in the record, Applicant's brief is not sufficient to rebut the presumption that the Judge considered all of the evidence in formulating her decision. Neither has he demonstrated that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 09-01735 at 2 (App. Bd. Aug. 31, 2010).

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 and 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: Jean E. Smallin

Jean E. Smallin  
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