

KEYWORD: Guideline F

DIGEST: The Judge discussed Applicant's repayments of certain debts and concluded that this evidence was not sufficient mitigation. Adverse decision affirmed.

CASENO: 10-05277.a1

DATE: 07/08/2011

DATE: July 8, 2011

In Re:)
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 -----) ISCR Case No. 10-05277
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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 November 4, 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 21, 2011, after the hearing, Administrative Judge Carol G. Ricciardello 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 failed to take into account favorable record evidence; whether the Judge erred in her application of the Financial Considerations Disqualifying Conditions (FCDC); and whether the Judge erred in her application of the Financial Considerations Mitigating Conditions (FCMC). Consistent with the following, we affirm the Judge’s decision.

The Judge made the following pertinent findings of fact: Applicant is a 24-year-old high school graduate. She married in 2005 and separated from her husband in 2007. They were divorced in 2009. She has no children. Applicant grew up in foster care. After graduating from high school, she went to work for a U.S. Government agency, where she held a security clearance. She resigned her job and moved to another state, working for a while for a temporary employment agency. She moved back to her home state in 2007 and resumed working for the Government agency, though she resigned later that year due to the emotional impact of her divorce proceedings. She was unemployed from November 2007 to May 2009, when she was hired by her current employer. In early 2010, Applicant broke her ankle while at work. She received payment through worker’s compensation.

Applicant has about \$66,000 in delinquent debts. Some of these were acquired jointly with her ex-husband, some were acquired by Applicant solely. Her ex-husband refuses to help pay the joint debts, and these debts were unresolved as of the close of the record. Two of the debts were for automobile loans, in the amounts of \$29,132 and \$11,308 respectively. She is currently negotiating the return of the car underlying the larger of the two loans. The smaller one represents Applicant’s obligation following a voluntary repossession of another automobile. Applicant had not contacted this creditor as of the close of the record. The SOR listed other debts as well, for such things as cable services, rent, a credit card, etc. Applicant has paid some small debts and one larger one that were not alleged in the SOR.

Applicant contacted a money management company in 2010. She learned how to prepare a budget and how to challenge debts on her credit report. She has had some debts removed from her report. Applicant eventually concluded that money spent on this company’s program could be better spent on debt reduction.

Applicant’s plan is to pay off all her debts, beginning with the smaller ones. Her salary has increased, and she now has more disposable income. She plans to move to a less expensive residence. She is current on her bills. Applicant enjoys an excellent reputation for her professionalism, maturity, and integrity.

In analyzing the pertinent FCMCs, the Judge noted Applicant's divorce and her injury, which were circumstances outside her control. She also credited Applicant for Applicant's participation in the money management program. However, the Judge stated that Applicant's periods of unemployment were apparently due to her own voluntary decisions. Moreover, insofar as Applicant had only recently begun to address her debts, she had not demonstrated a track record of debt resolution. Accordingly, the Judge concluded that Applicant had not met her burden of persuasion as to mitigation.

Applicant contends that the Judge did not consider all of the record evidence, such her efforts at debt repayment. However, the Judge discussed Applicant's repayment of certain debts, concluding that this evidence was not enough to demonstrate mitigation. Applicant has failed to rebut the presumption that the Judge considered all of the record evidence. *See, e.g.*, ISCR Case No. 10-01168 at 2 (App. Bd. Apr. 22, 2011).

Applicant alleges that the Judge found FCDC 19(b)¹ and 19(d)² against her, stating that there is no record evidence that she had engaged in the kind of conduct referenced in these two DCs. In the Analysis portion of the Decision, the Judge stated that she had considered all of the FCDCs. However, the two that she found to be most pertinent to Applicant's case were FCDC 19(a)³ and 19(c).⁴ The Judge did not conclude that Applicant's case raised the two challenged DCs, and her discussion provides no support for Applicant's contention to the contrary.

In support of her appeal, Applicant submits evidence not contained in the record concerning her efforts at debt repayment. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. *See also* ISCR Case No. 09-08430 at 2 (App. Bd. Apr. 21, 2011).

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.'"

¹Directive, Enclosure 2 ¶ 19(b): "indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt[.]"

²Directive, Enclosure 2 ¶ 19(d): "deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasions, expense account fraud, filing deceptive loan statements, and other intention financial breaches of trust[.]"

³Directive, Enclosure 2 ¶ 19(a): "inability or unwillingness to satisfy debts[.]"

⁴Directive, Enclosure 2 ¶ 19(c): "a history of not meeting financial obligations[.]"

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