

KEYWORD: Guideline F

DIGEST: Applicant has not rebutted the presumption that the Judge considered all the evidence. Adverse decision affirmed.

CASENO: 10-07881.a1

DATE: 10/05/2012

DATE: October 5, 2012

In Re:)	
)	
-----)	ISCR Case No. 10-07881
)	
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 March 29, 2012, 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 August 2, 2012, after the hearing, Administrative Judge Arthur E. Marshall, 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 Judge failed to consider, or misweighed, the record evidence and whether the Judge’s decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge made the following pertinent findings of fact: Applicant has experienced unemployment in the recent past. She dropped out of a medical assistant program in 2005 and left a retail sales position soon thereafter, due to the birth of her first child. She worked in the insurance industry, but left her job due to undisclosed medical reasons. She was unemployed between 2008 and 2010.

Applicant has numerous delinquent debts, about half of which relate to medical issues. Applicant claims to have paid some of her debts, but she provided little supporting evidence. Applicant attributes her financial problems to her unemployment and to her medical problems. Her current salary does not provide enough income to enable her to make progress in debt repayment. Her plan is to start paying off smaller debts. She has recently contacted a debt consolidation program, although she cannot afford the monthly payments which the program would entail. She hoped to have her plan implemented by the end of July 2012.

In the Analysis, the Judge concluded that Applicant’s circumstances set forth Guideline F security concerns. Regarding mitigation, the Judge resolved some of the debts in Applicant’s favor. However, for the balance of them, he concluded that Applicant had not demonstrated mitigation. Although he noted that Applicant has tried to economize and has received some financial counseling, he stated that she had not established progress in debt repayment. He also stated that her approach to her debts appears to be “ad hoc.” Decision at 8. Citing to the Directive’s requirement that doubts about an applicant’s fitness for a security clearance must be resolved in favor of national security, the Judge denied Applicant a clearance.

Applicant’s appeal brief cites to record evidence concerning such things as her efforts to pay her debts and the effect of her and her husband’s unemployment on their finances. To the extent that she is arguing that the Judge failed to consider this evidence, a Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-01027 at 3 (App. Bd. Jul. 9, 2012). The Judge made findings about Applicant’s circumstances, noting however that the record did not demonstrate that her unemployment was beyond her control. Applicant has not rebutted the presumption that the Judge considered all of the evidence. Neither has she demonstrated that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 09-02907 at 2 (App. Bd. Mar. 31, 2010). In support of her appeal, Applicant has

submitted evidence from outside the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. *See also* ISCR Case No. 11-03623 at 3 (App. Bd. Jul. 25 2012).

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. *See, e.g.*, ISCR Case No. 09-05390 at 2 (App. Bd. Oct. 22, 2010)(Promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner). “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