

KEYWORD: Guideline F

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the record evidence. Despite the presence of some mitigation, the record supports the Judge’s adverse conclusion. Adverse decision affirmed.

CASE NO: 10-08192.a1

DATE: 10/04/2012

DATE: October 4, 2012

In Re:)	
)	
-----)	ISCR Case No. 10-08192
)	
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 April 18, 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 July 26, 2012, after the hearing, Administrative Judge Edward W. Loughran 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 all of the record evidence; whether the Judge failed properly to weigh the evidence; whether the Judge’s application of the mitigating conditions was in error; and 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 worked for his current employer, a Defense contractor, since April 2010. He served in the U.S. military from 1998 until 2008 and held a security clearance while doing so. He married in 2000, divorcing six years later. He is married a second time and has three children.

Applicant has experienced financial problems for several years. He and his first wife were discharged in Chapter 7 bankruptcy in 2005. Applicant has attributed the difficulties to his former wife's mismanagement of their finances while he was deployed. After leaving the military he experienced a period of unemployment and what work he did find was not remunerative. He became unable to pay his bills, and he had three cars repossessed. Additionally, Applicant attempted to maintain two households after he and his first wife separated, which exacerbated his debt problems.

In addition to the bankruptcy, the SOR alleges 13 delinquent debts, totaling about \$35,000. Applicant has admitted these debts. The only financial counseling Applicant has received was that required for his bankruptcy filing. He has made some payments toward his debts, and he has paid off several not alleged in the SOR. He has made no payments since February 2012. He currently earns enough to pay his ordinary expenses plus child support, but he cannot make any payment toward his delinquent debts. He is considering filing for Chapter 13 bankruptcy protection.

Applicant received numerous awards and accolades during his military career, and he served at least one deployment to a war zone. He enjoys an excellent reputation for duty performance, responsibility, trustworthiness, and honesty.

In the Analysis, the Judge cited to evidence of the first wife's financial mismanagement, the cost of Applicant having to maintain two households, and Applicant's unemployment, all of which the Judge described as circumstances outside Applicant's control. However, he also noted that Applicant's finances continued to be a problem even after his 2005 discharge in bankruptcy. The Judge concluded that Applicant had not demonstrated responsible behavior regarding his debts, nor had he made good-faith efforts to pay them. He concluded that Applicant's financial problems are ongoing and that he could not determine that they are unlikely to recur. Although citing to Applicant's military service in a war zone and his character evidence, the Judge ultimately concluded that Applicant's case in mitigation did not resolve all doubts raised by his financial problems.

Applicant's brief has cited to various pieces of record evidence, such as his first wife's contribution to his financial problems, his military service, and his having held a clearance for 10 years while in the service, without incident or concern. This was evidence the Judge was bound to consider, along with the other evidence in the file. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-06824 at 2 (App. Bd. Apr. 9, 2012). We find nothing in the Judge's findings or in his analysis of the evidence that would rebut the

presumption that he had considered all of the evidence. Moreover, Applicant has not demonstrated that the Judge weighed the evidence in an improper manner.

Applicant contends that the evidence supports favorable application of two mitigating conditions, 20(a)¹ and (b).² However, the Judge addressed these provisions in the Analysis. His conclusion that Applicant had failed to meet his burden of persuasion as to mitigation, despite the presence of some favorable evidence, is reasonable. The record demonstrates 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 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

¹Directive, Enclosure 2 ¶ 20(a): “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.”

²Directive, Enclosure 2 ¶ 20(b): “the conditions that resulted in the financial problem were largely beyond the person’s control . . . and the individual acted responsibly under the circumstances.”

James E. Moody
Administrative Judge
Member, Appeal Board