KEYWORD: Guideline F

DIGEST: The Judge engaged in extensive questioning of Applicant and spoke at greater length than necessary about Applicant's choices and circumstances. The totality of the comments may have appeared as lecturing to the unrepresented Applicant. A Judge is the finder of fact and enjoys latitude in conducting the proceedings and asking questions to clarify the record. Any flaws in the Judge's conduct are not sufficient to show bias. Adverse decision affirmed

CASENO: 11-08844.a1

DATE: 01/10/2013

DATE: January 10, 2013

	)	
In Re:	)	
	)	
-----	)	ISCR Case No. 11-08844
	)	
	)	
Applicant for Security Clearance	)	
	)	

APPEAL BOARD DECISION

<u>APPEARANCES</u>

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 May 4, 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 October 19, 2012, after the hearing, Administrative Judge Robert Robinson Gales 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 was biased against Applicant; whether the Judge failed to consider all of 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 works for a Defense contractor. He has held a secret clearance since 1988. He holds both a bachelor's and a master's degree and has completed some course work toward a doctorate.

Applicant from time to time refinanced his home, using some of the proceeds to pay for his children's college educations. In 2007, Applicant decided to sell his house and purchase a smaller one. However, his wife developed a serious illness, which delayed his plans and which entailed some expenses that were not covered by medical insurance. In addition, the national economy collapsed, which had a deleterious effect on the local housing market. A result of this economic turmoil was that Applicant's house value plummeted below the amount owed on his mortgage.

Although he continued to make his mortgage payments, he began using credit cards for his every day living expenses. He withdrew money from his retirement account. However, he was not able to withdraw the remainder penalty-free without resigning from his job. He eventually moved into his mother-in-law's residence in order to economize. Nevertheless, many of his accounts became delinquent and were placed in collection or charged off.

He consulted with a financial counselor, who provided no education or debt consolidation, but who did recommend that Applicant file for bankruptcy. He initiated Chapter 13 proceedings but, after receipt of the SOR, elected to wait. He does not qualify for Chapter 7 bankruptcy because of his salary.

His annual gross salary is $152,000. After expenses, he has a monthly balance of $1,539. He was not able to say where he spent this amount each month.

The SOR alleges 10 delinquent debts, totaling approximately $725,152. Two of these debts are first and second mortgages on his house. The first mortgage went into foreclosure. He has been exploring a short sale as an alternative, but his efforts were ongoing at the close of the record. The remaining 8 debts are for credit card accounts. He stated that he had spoken with his creditors, and that they are willing to settle "for ten cents on the dollar." Applicant claims, though, that even this is more than he can pay. He has not provided corroboration for his claims to have been working

with his creditors. In any event, he admittedly has done nothing actually to resolve these debts. He intends nothing more than to proceed with his bankruptcy action.

In the Analysis, the Judge concluded that Applicant's financial circumstances satisfied the criteria for two Guideline F Disqualifying Conditions, (a)[1] and (c).[2] In examining Applicant's case for mitigation, he concluded that Applicant's financial problems were both frequent and relatively recent, that Applicant had received no actual debt counseling, and that there is no evidence to demonstrate that Applicant has made good-faith efforts to pay his debts. ```Although acknowledging that Applicant's financial problems were affected by circumstances outside his control, the Judge nevertheless concluded that Applicant had not demonstrated responsible action in regard to his debts.[3] The Judge concluded that Applicant had failed to mitigate the security concerns in his case.

Applicant contends that the Judge was biased against him. A Judge is presumed to be unbiased, and an applicant who contends otherwise has a heavy burden of persuasion. *See, e.g.*, ISCR Case No. 10-04136 at 3 (App. Bd. May 1, 2012). We have examined the Judge's decision and the record as a whole, paying particular attention to his conduct of the hearing as set forth in the transcript. The Judge engaged in some extensive questioning of Applicant after the completion of the Government's case in chief. He spoke at greater length than necessary about Applicant's choices and circumstances. While no individual statement suggests bias, the totality of the Judge's comments may have appeared as lecturing, especially to the unrepresented Applicant. However, a Judge in a DOHA hearing is the finder of fact and he or she enjoys considerable latitude in conducting the proceedings, to include asking questions to clarify the record. *See, e.g.*, ISCR Case No. 08-07618 at 3 (App. Bd. Jan. 26, 2011). In the case currently before us, any flaws in the Judge's conduct of the proceedings are not sufficient to convince a reasonable person that he had divested himself of his impartiality.

Applicant cites to record evidence which, he contends, the Judge did not appear to have considered. Among other things, he cites to a comment toward the end of his clearance interview summary to the effect that there is nothing in Applicant's background that could be used against him. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-05512 at 2 (App. Bd. Oct. 24, 2012). The comment to which Applicant draws our attention is simply a summary of his reply to the interviewer's question rather than the interviewer's independent opinion of his security worthiness. Considering the record as a whole, Applicant's brief has not rebutted the presumption that the Judge considered all of the evidence.

---

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

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

[3]*See* Directive, 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[.]"

3

Applicant challenges the Judge's conclusion that he has a history of not meeting debts. To the extent that he is arguing that the evidence in his case does not raise security concerns under Guideline F, we note that he admitted all of the allegations in the SOR. Additionally, the Government produced credit reports; Applicant's answers to DOHA interrogatories; and Applicant's security clearance application, which contains relevant information about Applicant's financial problems. These documents, taken together, demonstrate that, since 2007, Applicant has had a difficult time with his finances. This is sufficient to demonstrate a history within the meaning of the Directive. *See* ISCR Case No. 10-03125 at 3 (App. Bd. Apr. 13, 2012), to the effect that an applicant's SOR admissions and credit reports can raise security concerns under Guideline F.

Applicant has challenged some of the statements in the Judge's findings of fact, which he believes are not supported by the record. For example, he cites to a comment that he was unwilling to sell his house at a loss. Applicant contends that he was simply unable to sell his house and that the Judge's statement presents his circumstances in an improper light. He also cites to other comments which he believes are not accurate. We have examined the Judge's findings in light of the record as a whole. We conclude that the Judge's material findings of security concern are based upon substantial record evidence or constitute reasonable characterizations or inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 11-04287 at 3 (App. Bd. Sep. 11, 2012). Applicant has not cited to any harmful error in the Judge's findings.

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 Decision is **AFFIRMED**.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board