

KEYWORD: Guideline F

DIGEST: The Judge found Applicant was discharged in bankruptcy in 1997 and unpaid tax debt of \$86000 as well as credit card debts. Adverse decision affirmed.

CASENO: 07-04021.a1

DATE: 05/16/2008

DATE: May 16, 2008

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In Re:)	
)	
-----)	ISCR Case No. 07-04021
)	
)	
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 August 22, 2007, 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 February 6, 2008, after the hearing, Administrative Judge LeRoy F. Foreman denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant has raised the following issues on appeal: whether certain of the Judge’s findings were supported by substantial evidence; and whether the Judge erred in failing to mitigate the Guideline F security concerns in her case.¹ Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant was discharged in Chapter 7 bankruptcy in 1997. The next year, due to her husband’s job loss, Applicant filed for Chapter 13 bankruptcy protection. This was subsequently dismissed due to an improvement in Applicant’s financial situation. However, Applicant subsequently lost her job and her husband’s business suffered a downturn. In addition, Applicant’s husband made accounting mistakes in preparing their personal and business income tax returns.

Applicant and her husband got behind in their taxes. The IRS filed a lien for \$30,219 in March 2005 and a second one for \$8,261 in December 2005. Applicant’s total unpaid tax debt from 2003 to 2006 was \$86,000. Applicant and her husband hired a tax lawyer to assist them in resolving their debts. They are seeking to refinance their home and use the equity to pay off part of their IRS debt and negotiate payment of the balance. As of the close of the record Applicant has not received a decision on their proposal from the IRS.

Applicant has six active credit cards and carries a total balance among them of between \$10,000 and \$20,000. Applicant has a savings account with a balance of less than \$10,000. She and her husband have no other assets other than the family household furnishings.

The Board has considered Applicant’s brief, the Judge’s decision, and the record. The Judge’s material findings of security concern are supported by 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 record.”) The Judge properly concluded that Applicant’s case raised security concerns under Guideline F. Furthermore, the Judge drew a “rational connection between the facts found” and his conclusion that neither the Guideline F mitigating conditions nor the whole-person factors support a decision favorable to Applicant. *See 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 decision reflects that he considered the entire record, including the evidence favorable to Applicant. However, the presence of some mitigating evidence does not

¹The Judge’s favorable decision under SOR ¶¶ 1 (a) and (b) is not at issue in this appeal.

compel a favorable overall security clearance decision. *See, e. g.*, ISCR Case No. 05-03452 at 3 (App. Bd. Jul 3, 2007). The record supports the Judge’s conclusion that Applicant has failed to meet her burden of persuasion that it is “clearly consistent with the national interest” for her to have a clearance. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairman, 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