

KEYWORD: Guideline F

DIGEST: Given the extent of Applicant’s delinquent debts, the evidence she submitted in her own behalf was not sufficient to mitigate the Guideline F security concerns in her case. Adverse decision affirmed.

CASENO: 07-15062.a1

DATE: 03/23/2009

DATE: March 23, 2009

In Re:)	
)	
-----)	ISCR Case No. 07-15062
)	
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 27, 2008, 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). On January 29, 2009, after considering the written record,¹ Administrative Judge Rita C. O’Brien denied Applicant’s

¹Applicant’s answer to the SOR did not state whether she desired a hearing or a decision on the written record. Neither did the Government request a hearing. Therefore, consistent with Directive ¶ E3.1.7, the Judge produced a decision on the written record. Decision at 2.

request for a security clearance. Applicant filed an appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether certain of the Judge's findings of fact are based upon substantial evidence and whether the Judge's decision is arbitrary, capricious, or contrary to law.² Finding no error, we affirm.

The Judge found that Applicant had numerous delinquent debts, despite the fact that certain debts listed in the SOR were repeats of others. Applicant's gross annual pay is \$32,485 and her net is \$20,000. Applicant has entered into an agreement with a debt consolidation program. She is a 46 year-old divorced mother of three.

Applicant argues that "the amount of my debt is not correctly listed." She asserts that she does not have over \$100,000 in debt and that some of the items (debts) are duplicated. The Board construes Applicant's statement as a claim that the Judge incorrectly found that she has \$100,000 in debt. A review of the Judge's decision reveals that the Judge never made an explicit finding that Applicant had \$100,000 in debt. Rather than make a specific finding on the total amount of Applicant's debt, the Judge referenced the fact that the SOR alleged 21 debts which totaled more than \$100,000. The Judge noted that Applicant disputed the \$100,000 total and claimed that her actual total delinquent debt amounted to approximately \$73,000. Thus, the Judge was aware of Applicant's admission that she had \$ 73,000 in debt, and, since the Judge made no finding as to the aggregate amount of Applicant's debt, there is nothing in the decision to indicate that the Judge's analysis and conclusions were based on a finding that Applicant had \$100,000 in debt. Indeed, the Judge found that some of the debts listed in the credit reports are duplicates. Given this, and inasmuch as Applicant admitted to \$73,000 in debt, the Board concludes that, after a review of the record evidence in this case, the \$27,000 discrepancy between the amount alleged in the SOR and the amount admitted to by Applicant did not materially alter the Judge's analysis or conclusions in the case. In fact, the Judge's found in Applicant's favor regarding several of the allegations in the SOR and ultimately found against Applicant on only \$53,350 of debt. Applicant has not established harmful error on the part of the Judge.

The Board concludes that 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 same record.") Applicant asserts that the Judge erred concerning the amount she owes for child support payments. However, the Judge found in Applicant's favor under the SOR allegation pertaining to this matter. Therefore, even if the Judge's finding of fact was erroneous, it was harmless. *See* ISCR Case No. 06-23112 at 2 (App. Bd. Dec. 31, 2007); ISCR Case No. 00-0250 at 6 (App. Bd. Jul. 11, 2001).

In support of her appeal Applicant has submitted new matters not contained in the record, which the Board cannot consider. *See* Directive ¶ E3.1.29. ("No new evidence shall be received or considered by the Appeal Board"). The Judge's decision, viewed in light of the record as a whole,

²The Judge's favorable findings under SOR subparagraphs 1(h), (p), and (u) are not at issue in this appeal.

draws a rational connection between the facts found and its ultimate denial of a security clearance for Applicant.³ See ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). See also *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 that "it is not clearly consistent with the national interest to allow Applicant access to classified information" is sustainable on this record. Decision at 7. 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: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

³"Applicant is . . . a mature, responsible adult. She accrued significant debt over the past several years. In response to the government's concerns she offered proof that she pays one debt: her child support arrearage, which is paid by garnishment. She also offered proof that she signed an agreement with a debt-relief organization, but no record evidence of payments. Absent evidence that the payment plan is underway, and that Applicant has, in fact, begun making payments, the government's security concerns remain. A fair and common-sense assessment of available information bearing on Applicant's suitability for a security clearance shows she has not satisfied the doubts about her ability or willingness to protect the government's interests. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government." Decision at 7.