

KEYWORD: Guideline F

DIGEST: Applicant's brief contends that the Judge did not consider Applicant's exhibits submitted after the hearing. The Judge's decision indicates otherwise. Adverse decision affirmed.

CASENO: 08-06435.a1

DATE: 05/17/2010

DATE: May 17, 2010

_____)	
In Re:)	
)	
-----)	ISCR Case No. 08-06435
)	
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 May 8, 2009, 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 March 11, 2010, after the hearing, Administrative Judge Robert J. Tuider 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: whether the Judge failed to consider record evidence favorable to Applicant and whether the Judge’s adverse security clearance decision was arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant has applied for a job with a Defense contractor, to serve as a linguist and cultural advisor. He had immigrated to the U.S. from Pakistan in the early 1970s and became a naturalized citizen in the early 1990s.

Applicant had significant delinquent debts, including one owed to the state lottery commission for \$68,501. He incurred these debts from the mid-1990s to the mid-2000s, when he owned a grocery store. The store failed during an economic downturn. Additionally, Applicant’s store was robbed, which also caused him economic loss.

In the Analysis portion of the decision, the Judge noted the business downturn, a circumstance beyond Applicant’s control which affected his financial condition. However, the Judge stated that “Applicant offered no evidence that he has made any payments to any creditors. There is no evidence that he has contacted any of his creditors. In short, there is no evidence the Applicant has acted responsibly under the circumstances. There are no clear indications that his financial problem is being resolved or is under control. He has not established financial responsibility.” Decision at 9. Accordingly, the Judge held that Applicant had failed to mitigate the security concerns in his case.

Applicant’s brief appears to contend that Applicant submitted documents to the Judge after the hearing but that the documents were not considered. However, the Judge’s decision indicates that the documents in question were admitted into evidence. Decision at 2. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009); ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008).

After reviewing the record, the Board concludes 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. “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).

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairperson, 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