

KEYWORD: Guideline F

DIGEST: Favorable language in the Judge decision only demonstrated that the Judge the mitigating evidence. It did not detract from the ultimate adverse decision. Adverse decision affirmed.

CASENO: 08-06591.a1

DATE: 10/16/2009

DATE: October 16, 2009

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In Re:	)	
	)	
-----	)	ISCR Case No. 08-06591
	)	
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 December 15, 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). Applicant requested a hearing. On July 29, 2009, after the hearing, Administrative Judge Mark Harvey 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 considered all the record evidence; whether the Judge’s application of the pertinent mitigating conditions was erroneous; and whether the Judge’s adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge found against Applicant on four of the seven debts alleged in the SOR. These four were delinquent debts arising from credit cards, consumer purchases, a car loan, and a veterinarian bill. The total amount of this debt is \$22,260. Applicant’s financial problems were caused in part by a job loss. To address his financial situation, Applicant entered into a relationship with a debt consolidation company. Applicant submitted to the Judge five checks that he claimed he had sent to this company in payment for its services. However, he subsequently stated that he had informed the company to shred the checks and that they had not actually been cashed. In deciding the case adversely to Applicant, the Judge stated that Applicant “should have acted more aggressively to pay his delinquent debts[.]” Decision at 10.

In support of his appeal Applicant has submitted new matters not contained in the record, for example three credit reports dated September 8, 2009. The Board cannot consider this new evidence. See Directive ¶ E3.1.29. (“No new evidence shall be received or considered by the Appeal Board”). See also ISCR Case No. 08-06518 at 2 (App. Bd. Mar. 3, 2009). Applicant contends that the Judge did not consider evidence which he believes to be favorable to his case. For example, he contends that the Judge did not read his contract with the debt consolidation company. However, a Judge is presumed to have considered all the evidence in the record. 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). Applicant’s appeal presentation is not sufficient to rebut that presumption.

Applicant points to favorable language in the Judge’s decision which, *inter alia*, acknowledges that Applicant has paid off certain debts not listed in the SOR, that he has never had a security violation, that he is a law-abiding citizen and good family member, and that his financial problems were “initially caused by unemployment and underemployment[.]” Decision at 10. Applicant believes that these comments by the Judge are inconsistent with his unfavorable decision. However, the Judge went on to say that these favorable matters are outweighed by evidence of Applicant’s lack of judgement in the management of his financial affairs and other evidence which the Judge reasonably concluded detracted significantly from Applicant’s credibility. Read in context, the comments which Applicant has cited merely demonstrate that the Judge considered the full range of potentially mitigating evidence contained in the file but concluded that such evidence was not sufficient to establish that Applicant had met his burden of persuasion.

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 decision that “it is not clearly consistent with the national interest to grant or continue Applicant’s eligibility for a security clearance” is sustainable on this record. Decision at 11. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’”).

### **Order**

The Judge’s unfavorable security clearance decision is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett  
Administrative Judge  
Member, 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