

KEYWORD: Guideline F

DIGEST: The Judge’s material findings of security concern are sustainable Applicant’s appeal presentation does not rebut the presumption that a Judge is impartial and unbiased. Adverse decision affirmed.

CASENO: 08-07264

DATE: 10/15/2009

DATE: October 15, 2009

)	
In Re:)	
-----)	ISCR Case No. 08-07264
)	
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 October 22, 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 May 7, 2009, after the hearing, Administrative Judge Carol G. Ricciardello 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 certain of the Judge's findings of fact were based upon substantial record evidence and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. The Board also construes Applicant's brief as challenging the Judge's impartiality. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is 59 years old and an employee of a federal contractor. The information technology (IT) industry in which Applicant worked experienced a severe downturn in the early 2000s, and Applicant subsequently endured periods of unemployment. When he did work Applicant earned less than he had when the industry was at its peak. When not working, Applicant would pay his living expenses with credit cards. Applicant had credit cards with four creditors, each listed in an allegation in the SOR. His credit card debts have become delinquent, the total amount of the delinquency being \$109,000.

Additionally, Applicant did not file federal income tax returns for 2006 and 2007. In the Analysis portion of the decision, the Judge noted that the crash in the IT industry was a circumstance beyond Applicant's control which affected his financial condition. *See* Directive ¶ E2.20(b). However, she went on to state that Applicant had provided no evidence (1) that he had sought financial counseling; (2) that he had initiated a good-faith effort to resolve his debts; or (3) that his creditors considered the debts resolved.¹

Applicant makes numerous assertions, based on what he contends are legal principles applicable to his case, in support of the proposition that he does not owe various debts. Applicant has failed to demonstrate that the Judge's findings and conclusions regarding his debts are erroneous. After reviewing the record, the Board concludes that the Judge's material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. For example, Applicant challenges the Judge's findings that his current salary is \$138,000 a year and that he failed to file income tax returns. He also claims that his credit reports contain errors. Considering the record evidence as a whole, the Judge's material findings of security concern are sustainable. Applicant has not identified any harmful error likely to change the outcome of the case. *See, e.g.*, ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007). There is a rebuttable presumption that a Judge is impartial and unbiased. Applicant's presentation on appeal is not sufficient to rebut that heavy presumption. *See, e.g.*, ISCR Case No. 07-02253 at 3 (App. Bd. Mar. 28, 2008); ISCR Case No. 02-08032 at 4 (App. Bd. May 14, 2004).

¹Applicant "sent letters to some of his creditors with \$100 payments to totally resolve his debts. Applicant has not made any other payments, nor has he made any other effort to resolve these delinquent debts . . . He believes he is not responsible for all the debt he incurred . . . Applicant's attitude towards following rules, acting responsibly, and exercising good judgment is troubling and a serious security concern." Decision at 11.

Furthermore, the Board concludes that the Judge has 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 interests of national security to grant Applicant 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 adverse security clearance decision is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, 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