

KEYWORD: Guideline F

DIGEST: Although Applicant’s prior bankruptcy proceeding was not alleged in the SOR, the Judge properly considered it as part of the whole-person analysis. Adverse decision affirmed.

CASE NO: 08-07602.a1

DATE: 08/04/2009

DATE: August 4, 2009

In Re:)	
)	
-----)	ISCR Case No. 08-07602
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Kenneth W. Prien, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 18, 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 15, 2009, after the hearing, Administrative Judge Mark W. 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’s findings were based upon substantial record evidence; whether the Judge failed to consider the entirety of the record evidence; whether Applicant was denied due process; whether the Judge erred in his application of

the mitigating conditions; and whether the Judge's whole-person analysis was erroneous. Finding no harmful error likely to change the outcome of the case, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a network engineer with 13 years of information technology experience. In the mid-1990s, he was discharged in Chapter 7 bankruptcy. He experienced a job loss in 2006 and was divorced from his wife in 2008. Applicant has delinquent debts arising from real estate transactions and from a loan for a truck. The delinquencies arose after Applicant's discharge in bankruptcy. The Judge noted the effect that divorce, job loss, and a real estate downturn had on Applicant's financial condition. However, in the Analysis portion of his decision, the Judge stated Applicant's bankruptcy demonstrates that his financial problems are not isolated. "He received the SOR in October 2008, and did not establish significant efforts to resolve his debts until January 2009. Although he showed excellent effort over the last four or five months to resolve his delinquent debts, he could have acted more aggressively to avoid delinquent debt, to seek debt repayment or resolution, and to better document his remedial efforts over the past two years." Decision at 15. In evaluating whether Applicant had met his burden of persuasion as to mitigation, the Judge gave considerable attention to the paucity of corroborating information. "Applicant did not provide a personal financial statement. He did not provide proof that he paid his share of the repairs on his truck . . . He said he thought the sale price on one property was sufficient to cover the mortgage when the actual sale price was \$224,000 less than the mortgage plus interest . . . I do not intend to imply Applicant is dishonest, but point out these mistakes to emphasize the importance of receiving complete documentation[.]" *Id.* at 13-14.

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. Applicant has not identified any harmful error likely to change the outcome of the case.¹ For example, Applicant claims that the Judge overstated the total amount of money due under a rental agreement for a car. Although the Judge's finding is consistent with Applicant Exhibit T at 21, even if it were erroneous there is little chance that it affected the ultimate decision. Considering the record evidence as a whole, the Judge's material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007). Moreover, a Judge is presumed to have considered all the evidence in the record. Applicant's submissions on appeal are not sufficient to rebut that presumption. *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). Much of Applicant's argument on appeal appears to consist of his taking issue with the Judge's weighing of evidence. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

Applicant contends that it was erroneous for the Judge to rely on the prior bankruptcy proceeding, insofar as it was not alleged in the SOR. He claims that he did not have an opportunity

¹Applicant identifies one sentence which suggests the Judge was inclined to grant Applicant a security clearance. "The Board does not read individual sentences of a Judge's decision in isolation." ISCR Case No. 05-14488 at 4 (App. Bd. Aug. 10, 2007). To the extent error is demonstrated, it is harmless. *See* ISCR Case No. 01-23362 at 2 (App. Bd. Jun. 5, 2006) for discussion of harmless error doctrine.

to present evidence at the hearing concerning this matter. The record demonstrates that this information came out during Applicant's testimony. Tr. at 169. The Judge specifically stated that he did not consider the bankruptcy under the Guideline F disqualifying conditions, although he took it into account in performing his whole-person analysis.² The Board concludes that the Judge's treatment of the bankruptcy was not error and that Applicant was not denied the due process afforded by the Directive.

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 16. *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: Michael Y. Ra'an
Michael Y. Ra'an
Administrative Judge
Chairman, Appeal Board

Signed: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

²Decision at 10, 15. The Judge stated that the bankruptcy was of low significance, given its remoteness. However, as stated above, the Judge did consider it as an aspect of Applicant's overall financial history.