KEYWORD: Guideline F

DIGEST: Applicant's second bankruptcy discharge occurred after the close of the record. It is the Judge who authorizes an extension in a Hearing Office proceeding. Adverse decision affirmed.

CASENO: 08-10897.a1

DATE: 05/17/2010

DATE: May 17. 2010

In Re:	)	
	)	
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	)	
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 July 13, 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 decision on the written record. On March 11, 2010, after considering the record, Administrative Judge David M. White 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 did not consider evidence favorable to Applicant; whether the Judge erred in the application of the pertinent mitigating conditions; and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is an employee of a Defense contractor. He is married to his fourth wife, with six children living with him and four others living elsewhere.

In 2001 Applicant filed for Chapter 7 bankruptcy protection. His debts were discharged later that year. Applicant's third wife had a substance abuse problem and spent so much money on her addictions that Applicant was reduced to relying on credit cards and loans to fund the ordinary expenses of life.

He bought a house in 2005, financing the purchase with a mortgage. He took out a second mortgage on the house two years later. Applicant has defaulted on his multiple credit card debts and his mortgage payments. "By September 2008, the outstanding balance on the second mortgage was $107,658, and the home was in foreclosure." Decision at 3. Although these debts were in Applicant's name only, his third wife had access to his funds. In August 2009, Applicant and his current wife filed for Chapter 7 bankruptcy protection.

In the Analysis portion of the decision, the Judge explained why he concluded that Applicant had failed to meet his burden of persuasion as to mitigation, He stated in part:

> Applicant failed to demonstrate financial rehabilitation or evidence of solvency from the present time forward, so recurrence and worsening of his financial concerns were not shown to be unlikely. He continues to bear financial obligations for significant past debt and ongoing living expenses. He accordingly remains subject to pressure, exploitation, or duress. The record contains insufficient other evidence about his character, trustworthiness, or responsibility to mitigate these concerns. Decision at 6.

Applicant contends that the Judge failed to consider favorable evidence, submitting in support of this contention documents to the effect that he had been discharged in Chapter 7 bankruptcy in late 2009. However, this evidence was not included in the record and, indeed, the

bankruptcy discharge occurred after the close of the record.[1] We cannot consider new evidence on appeal. *See* Directive ¶ E3.1.29. ("No new evidence shall be received or considered by the Appeal Board"). *See also* ISCR Case No. 08-06875 at 2 (App. Bd. Oct. 29, 2009); ISCR Case No. 08-06518 at 2 (App. Bd. Mar. 3, 2009). In this case, the Judge properly decided the case on the basis of the record before him.

Applicant contends that the Judge did not properly evaluate his mitigating evidence, for example his third wife's effect on his finances and his prior bankruptcy discharge in 2001, including his subsequent efforts to repair his credit. However, the record demonstrates that the Judge explicitly considered Applicant's mitigating evidence. The Judge stated that there was little evidence in the record explaining the circumstances underlying his first bankruptcy discharge.[2] He also stated that, despite evidence as to the third wife's addictions, Applicant had failed to demonstrate that his delinquent debts arose due to circumstances outside his control or that he had acted responsibly in regard to his debts.

The record does not support a conclusion that the Judge mis-weighed evidence. *See, e.g.*, ISCR Case No. 06-21819 at 2 (App. Bd. Aug. 13, 2009); ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007) (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.) Neither does it support a conclusion that the Judge's application of the mitigating conditions was erroneous.

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).

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[1]Applicant's brief includes an attachment dated December 22, 2009, some two months after the close of the record. The Judge had already accepted a submission dated October 27, 2009. On appeal Applicant asserts that the October 27, 2009, submission was timely because he had called Department Counsel to seek an extension and that someone from Department Counsel's office called him back and granted the extension. The Board has neither the authority nor the resources to confirm this assertion. In any case, it is the Judge, not the opposing party, who authorizes an extension in a Hearing Office proceeding.

[2]*See* Decision at 2: "The record contains insufficient information about the circumstances that led Applicant to seek bankruptcy relief in 2001 to support findings about its causes or reasonableness." Applicant contends that the Judge ignored information in his security clearance application regarding this bankruptcy. *See* Item 5, Security Clearance Application, at 19. However, the information in Item 5 is not sufficient to undermine the Judge's statement.

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: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

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