

KEYWORD: Guideline F; Guideline E

DIGEST: There is a rebuttable presumption that the Judge has considered all the record evidence. Applicant arguments on appeal fail to overcome that presumption. Adverse decision affirmed.

CASENO: 09-01425.a1

DATE: 01/15/2010

DATE: January 15, 2010

_____)	
In Re:)	
)	
----)	ISCR Case No. 09-01425
)	
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 April 20, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On October 29, 2009, after considering the record, Administrative Judge Martin H. Mogul 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 of the record evidence; whether the Judge erred in his application of the 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 found that Applicant has numerous delinquent debts. Applicant denied some of the debts and submitted a decree of divorce from his ex-wife. However, the Judge stated that Applicant had not provided evidence to demonstrate that his financial problems were connected to the divorce. The Judge also observed that Applicant provided no evidence as to why he has not used his after-expenses income to pay off debts. On the security clearance application (SCA), Applicant answered “no” to a question inquiring about debts delinquent more than 180 days. This answer was not true, in view of the fact that several of the debts alleged in the SOR were within the scope of the question and, therefore, required an affirmative answer.¹ The Judge concluded that Applicant had failed to mitigate the security concerns arising from his debts and from his false answer to the SCA question.

Applicant contends that the Judge did not consider favorable evidence, such as his divorce and the fact that he has held a top secret clearance for twelve years. A Judge is presumed to have considered all the evidence in the record, and Applicant’s submission on appeal is 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). Applicant contends that his debts over 180 days were ones which had been incurred by his ex-wife in his name during the course of the marriage. Applicant’s appeal submission does not demonstrate that this contention, even if true, would mitigate the security concerns in his case, especially the one arising from his false answer to the SCA.

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 national security to grant Applicant eligibility for a security clearance” is sustainable on this record. Decision

¹The SOR alleged that Applicant deliberately failed to disclose his debts over 180 days. In his response to the SOR, Applicant admitted this allegation.

at 7. “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: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

