

KEYWORD: Guideline F

DIGEST: Applicant failed to mitigate security concerns arising from her significant delinquent debt. The Board has no authority to grant Applicant’s request for an interim clearance to be followed by a review of her credit in one year. Adverse decision affirmed.

CASENO: 09-02045.a1

DATE: 11/02/2009

DATE: November 2, 2009

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In Re:)	
)	
-----)	ISCR Case No. 09-02045
)	
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 May 12, 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 August 19, 2009, after considering the record, Administrative Judge Rita C. O’Brien denied Applicant’s request for a security clearance. Applicant

appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a 27-year-old high school graduate. She has a three-year-old son. She and her husband have separated, and he has provided little by way of child support. Applicant has numerous delinquent debts. Those debts which the Judge found against Applicant total over \$26,000. The debts are for such things as medical expenses, utility payments, charge accounts, telecommunication services, etc. In concluding that Applicant had failed to meet her burdens of persuasion, the Judge cited a paucity of record evidence that the debts were being resolved and stated that she has "no real plan in place" to resolve them. Decision at 7.

In her appeal, Applicant submits what appears to be new evidence not contained in the record concerning a repayment plan for one of her creditors. The Board cannot consider 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 requests an interim security clearance be issued and her credit be reviewed after one year. The Appeal Board does not have the authority to grant the relief requested. *See, e.g.*, ISCR Case No. 08-05372 at 2 (App. Bd. Nov. 26, 2008).

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 considered evidence favorable to Applicant, such as her marital separation and her evidence of good character. However, the Judge plausibly explained why Applicant's evidence was not sufficient to mitigate the security concerns raised by her history of delinquent debt.

The Judge's decision that "it is not clearly consistent with the national interest to allow Applicant access to classified information" is sustainable on this record. Decision at 9. *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'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, 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