

KEYWORD: Guideline F

DIGEST: The error demonstrated by applicant is inconsequential in light of the totality of the Judge's sustainable findings. It did not likely have an appreciable effect on the Judge's decision. The error is harmless. Adverse decision affirmed.

CASENO: 09-02260.a1

DATE: 06/14/2010

DATE: June 14, 2010

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In Re:)	
)	
-----)	ISCR Case No. 09-02260
)	
)	
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 28, 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 hearing. On March 24, 2010, after the hearing, Administrative Judge Claude R. Heiny 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 are supported by substantial record evidence; whether the Judge mis-weighed the record evidence; 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 a systems administrator for a Defense contractor. He and his wife have five children.

In 1994, Applicant's debts were discharged in a Chapter 7 bankruptcy. In the late 1990s, two of his children were diagnosed with a serious medical condition, which entailed surgery and numerous periods of hospitalization over several years. Applicant's portion of the medical bills, after insurance payments, was \$38,000. He also had expenses due to an automobile accident and a later engine replacement for the same car. His wife has experienced unemployment in the past.

Applicant has numerous delinquent debts, for medical expenses, a mortgage arrearage, department store purchases, etc. Two of the debts alleged in the SOR, bank loans, are actually the same debt. In 2009 Applicant filed for Chapter 13 bankruptcy in order to forestall the foreclosure of his home.

In the Analysis portion of the decision, the Judge acknowledged the circumstances affecting Applicant's financial condition which were beyond his control—the medical expenses for his children and his wife's periods of unemployment. However, the Judge concluded that Applicant had failed to demonstrate responsible behavior in regard to his debts. He noted, for example, that the medical and unemployment difficulties occurred well in the past. Nonetheless, at the close of the record, Applicant had paid none of his SOR debts, even relatively small ones. Accordingly, the Judge concluded that Applicant had failed to meet his burden of persuasion as to mitigation.

In his appeal brief, Applicant has submitted new matters not contained in the record, which the Board cannot consider. *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).

Applicant contends that the Judge erred in some of his findings. For example, he challenges the Judge's statement that a bill owed to a transmission company had been paid by credit card, pointing to record evidence that it was paid instead by a draft from a bank.¹ However, this error is

¹Applicant took out a loan from a bank to pay for transmission repairs. The SOR alleged, and the Judge found, that the debt to the bank was not paid.

inconsequential in light of the totality of the Judge’s sustainable findings regarding Applicant’s financial difficulties and did not likely have an appreciable effect on the Judge’s decision. Therefore, the error is harmless. *See* ISCR Case No. 08-07528 at 2 (App. Bd. Dec. 29, 2009). The Judge’s material findings of security concern are based upon substantial record evidence and are sustainable. *See* Directive ¶ E3.1.32.1. (Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.”) *See also*, ISCR Case No. 08-07528 at 2 (App. Bd. Dec. 29, 2009); ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007).

Applicant contends that the Judge either ignored or mis-weighted favorable record evidence concerning his military service and his lengthy career as a Defense contractor. However, a Judge is presumed to have considered all the evidence in the record. *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 has not rebutted that presumption. Neither has he demonstrated that Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *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). The Judge’s ultimate conclusion, that Applicant’s having acquired significant delinquent debt even after having been discharged in bankruptcy raises security concerns which have not been mitigated by the favorable evidence in the record, is sustainable.

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).

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