

KEYWORD: Guideline F

DIGEST: Given Applicant's history of delinquent debt and the paucity of evidence regarding attempts to resolve the debt, the case in mitigation was not persuasive. Adverse decision affirmed.

CASENO: 09-04094.a1

DATE: 07/08/2010

DATE: July 8, 2010

_____)	
In Re:)	
)	
-----)	ISCR Case No. 09-04094
)	
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 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) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 10, 2010, after the hearing, Administrative Judge Juan J. Rivera 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 failed to consider record evidence favorable to Applicant; whether the Judge mis-weighed the evidence; and whether the Judge erred in his application of the pertinent mitigating conditions. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is employed by a Defense contractor. He served in the U.S. Navy from 1989 to 1996. While on active duty, he held a Top Secret security clearance. Applicant is married. He and his wife have no children.

Applicant has significant delinquent debts, for such things as medical expenses, cell phone services, credit cards, and education loans. His debts total approximately \$72,000. His financial problems were related to periods of unemployment following his discharge from the Navy and also to an employer having lost a Defense contract, resulting in Applicant having to accept follow-on work at a lower salary. He has hired a debt management service to assist him in resolving his financial difficulties. However, “[h]e presented no evidence of any prior financial counseling, participation in consumer debt consolidation programs, [or] that he was following a budget prior to February 2010.”¹ Decision at 4.

In the Analysis portion of the decision, the Judge stated:

Applicant and his wife were living beyond their financial means . . . He presented little evidence of debt payments, contacts with creditors, or negotiations to resolve his SOR debts. Considering the evidence as a whole, his financial problems are not under control. Applicant receives credit for contracting the services of a debt management company . . . However, it is too soon to determine whether he has a viable plan to resolve his financial predicament or that he will be able to avoid similar financial problems in the future. Decision at 6.

Applicant’s appeal raises the issue of whether the Judge either did not consider or did not properly weigh evidence favorable to him, for example his employment difficulties and his having held a Top Secret clearance while in the Navy. However, the record demonstrates that the Judge explicitly considered these matters, along with other favorable evidence, in his Analysis of Applicant’s case for mitigation. On the other hand, he plausibly explained his conclusion that Applicant’s financial problems originated in part from his having lived beyond his means. The Judge also concluded that Applicant had not demonstrated a responsible approach to his finances. The record evidence, viewed as a whole, supports this conclusion. Applicant has not rebutted the

¹The hearing in Applicant’s case was conducted on January 29, 2010.

presumption that the Judge considered all of the record evidence. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009). Neither has he demonstrated that the 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).

After reviewing the record, we conclude 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, in light of the standard announced in *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
Member, 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