

KEYWORD: Guideline F

DIGEST: The Judge's conclusion that Applicant has not demonstrated sufficient effort at debt resolution is sustainable. Adverse decision affirmed.

CASENO: 09-06436.a1

DATE: 02/15/2011

DATE: February 15, 2011

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In Re: )  
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 ----- ) ISCR Case No. 09-06436  
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 Applicant for Security Clearance )  
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**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 June 10, 2010, 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 November 30, 2010, after the hearing, Administrative Judge Jennifer I. Goldstein 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 all of the record evidence; whether the Judge erred in her application of the pertinent mitigating conditions; and whether the Judge's whole-person analysis is erroneous. Consistent with the following discussion, we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant is an employee of a Defense contractor.

Applicant was self-employed in a residential landscape and masonry business from 1989 to 2009. In 2007, he experienced business losses due to a downturn in the economy.

Applicant purchased a home in 2000 with \$10,000 down and \$181,000 financed. Since then he has refinanced multiple times. In 2006-7, he took out a mortgage of \$480,000. (Additionally he took out a home-equity line of credit of \$59,000). He opted for a minimum payment of interest only, and the balance of the mortgage rose significantly. He has applied for loan modifications and successfully participated a trial period of reduced payments. In August 2010, he was approved for loan modifications and a new three month trial period of reduced payments, but he refused it and filed for bankruptcy. The house is now appraised at \$380,000, and Applicant has not made a payment since June 2010. Applicant still lives in the house but has not decided if he will re-affirm the debt.

On September 16, 2010, Applicant filed for Chapter 7 bankruptcy listing about \$111,000 in consumer debt and more than \$626,000 in secured debts. The court has not yet issued a discharge. The Judge discussed the status of twenty specific delinquent debts alleged in the SOR. Applicant has attended credit counseling and made some positive changes in his financial conduct.

The Judge noted that Applicant's financial problems were caused by a financial downturn, which was a circumstance outside his control. However, she concluded that Applicant had failed to demonstrate responsible behavior in regard to his debts, nor had he shown an effort to pay the secured debts. Although she acknowledged Applicant's counseling, she concluded that the record as a whole did not resolve significant concerns about Applicant's financial situation.

Applicant contends that the Judge failed to consider all of the record evidence, for example the bankruptcy filing, his receipt of counseling and the economic downturn,. These are matters which the Judge was required to consider, along with the other record evidence. In fact, the Judge mentioned them in her findings and discussed them in the Analysis portion of the decision. However, her ultimate conclusion—that Applicant had not demonstrated a sufficient effort at debt resolution—is sustainable. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. *See, e.g.*, ISCR Case No. 09-01735 at 2 (App. Bd. Aug. 31, 2010).

Applicant challenges the Judge’s application of the Guideline F mitigating conditions. The Judge discussed in detail each of the potentially applicable Guideline F mitigating conditions and related them to the facts of the case. Applicant cites evidence he maintains supports a granting of his security clearance. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. *See, e.g.*, ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 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. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). In this case, the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. The Judge properly considered the whole pattern of Applicant’s handling of his finances, including those matters over which Applicant had no control. She adequately discussed why the disqualifying conduct established under Guideline F was not mitigated. Similarly, the Judge’s whole-person analysis is sustainable.

The record supports a conclusion 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,’” both as to the mitigating conditions and the whole-person factors. *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: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board