

KEYWORD: Guideline F

DIGEST: Applicant has not rebutted the presumption that the Judge considered all of the record evidence. Neither has he demonstrated that the Judge mis-weighed the record evidence. Adverse decision affirmed.

CASE NO: 09-07683.a1

DATE: 08/08/2011

DATE: August 8, 2011

In Re:)	
)	
-----)	ISCR Case No. 09-07683
)	
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 June 23, 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 May 24, 2011, after the hearing, Administrative Judge Robert J. Tuijer 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 and whether the Judge’s adverse decision was arbitrary, capricious, or contrary

to law. Consistent with the following, we affirm the decision.

The Judge made the following pertinent findings of fact: Applicant is a senior technician for a Defense contractor. Born in Guyana, he came to the U.S. at age 10. Married in the late 1980s, he has two stepchildren and two natural children.

Applicant has numerous delinquent debts, totaling \$56,724. They are for such things as state and federal tax liens, several judgments entered against Applicant, collection accounts for medical services and a credit card, and past due accounts for medical services and for utilities. Applicant is paying off the Federal tax lien at the rate of \$75 a month. He has been making these payments for two years.

Applicant attributes his financial problems to an unplanned move from the East Coast to the West Coast to care for an injured stepchild; problems he encountered when severing his relationship with an East Coast investment property in which he was part owner; problems he encountered in leaving his East Coast employer; and medical bills incurred in his own behalf.

The Judge observed that Applicant provided little evidence either of debt repayment or of efforts to dispute debts. He also found that Applicant's post-hearing documents were of little relevance, in that they either did not pertain to Applicant's SOR debts or that they did not contain explanations of their significance.

In the Analysis, the Judge found in Applicant's favor regarding the federal tax lien. However, he concluded that Applicant had failed to demonstrate responsible action with regard to his remaining debts.¹ He also stated that Applicant had not obtained financial counseling² and that Applicant had not demonstrated a good-faith effort to pay off his debts.³ Accordingly, he concluded that Applicant had not mitigated the security concerns raised by the SOR.

On appeal, Applicant discusses his interpretation of the record evidence. For example, he focuses on his claim not to owe a tax debt to his state of residence and on his claims not to owe many of the other debts alleged in the SOR. However, the brief is not sufficient to demonstrate that the Judge mis-weighed Applicant's testimony on these matters, nor is it sufficient to undermine the Judge's finding that there was little or no corroboration for Applicant's claims. A Judge is presumed to have considered all of the record evidence. Applicant has not rebutted this presumption, nor has he demonstrated that the Judge mis-weighed the evidence. *See, e.g.*, ISCR Case No. 09-06691 at 3-4 (App. Bd. May 16, 2011). Furthermore, a party's disagreement with the Judge's weighing of the record evidence or an ability to argue for an alternative interpretation of the record evidence is

¹See Directive, Enclosure 2 ¶ 20(b): "the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances[.]"

²Directive, Enclosure 2 ¶ 20(c): "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control[.]"

³Directive, Enclosure 2 ¶ 20(d): "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]"

not sufficient to demonstrate error. *See, e.g.*, ISCR Case No. 08-08944 at 2 (App. Bd. Nov. 3, 2009).

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.’” *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). *See also* Directive, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor 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: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board