

KEYWORD: Guideline B; Guideline F

DIGEST: The Judge’s conclusion that Applicant’s debts were his own and were not the responsibility of his father is supported by the record. The record also supports the Judge’s conclusion that Applicant’s relatives in Lebanon are a means through which Applicant might be subjected to coercion or placed in a conflict of interest. Adverse decision affirmed

CASENO: 10-03125.a1

DATE: 04/13/2012

DATE: April 13, 2012

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In Re:	)	
	)	
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	)	
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 10, 2011, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and 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 January 25, 2012, after considering the record, 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 the Government met its burden of production and whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision.

The Judge found that Applicant is an intelligence analyst for a Defense contractor. He held a security clearance while he was in the Marine Corps. He receives a disability payment each month, but there is no record evidence about the nature or origin of the disability.

Applicant was born in Lebanon, becoming a naturalized United States citizen in the late 2000s. His parents were born in Lebanon. His mother became a U.S. citizen and lives in the U.S. with Applicant's stepfather. Applicant's stepmother is a citizen and resident of Lebanon. She is employed by the Lebanese government, and she has been his stepmother since he was eight years old. He and his stepmother speak by telephone once a month. He has a half-sibling who is a citizen and resident of Lebanon and with whom he speaks monthly by telephone.

Lebanon has a poor human rights record. Its security forces arbitrarily arrest and detain persons, subjecting them to torture. Syria maintains troops and intelligence assets in Lebanon. Lebanon is a "permissive environment" for terrorist organizations. Hizballah is a radical group active in Lebanon.

Applicant's credit reports list two home foreclosures, as well as credit card accounts that were delinquent. A credit report lists one of the credit card debts as having been disputed. Applicant is a client of a credit service, although there is no evidence as to the nature of the services provided.

In the Analysis, the Judge concluded that Applicant's family circumstances raised concerns under Guideline B. The Judge stated that, given the totality of these circumstances, there exists a "heightened risk" that Applicant could be subjected to foreign coercion. He also stated that it is foreseeable that Applicant could be placed in a conflict of interest between his ties to his family and the interests of the United States.

The Judge concluded that the evidence demonstrated Guideline F security concerns, relying upon his findings about the nature and extent of the debts attributed to Applicant in the credit reports. He stated that Applicant had known about these debts since 2007, yet he had done little to address them, save his agreement with the credit services agency. The Judge stated that the only evidence in the record of circumstances outside Applicant's control was his statement that his father had incurred the debts in Applicant's name. The Judge noted that this claim was not corroborated. He went on to say that "Even were that true, he has not acted responsibly in addressing his debts." Decision at 8. He stated that the record contained no evidence that (1) Applicant had received financial counseling; (2) Applicant's finances were under control or that he had a plan to bring them under control; or (3) Applicant had made a good-faith effort to pay his debts.

Applicant's arguments on appeal rely on new evidence, including detailed evidence of his military service. This evidence was not before the Administrative Judge. The Board cannot consider new evidence on appeal. *See* Directive ¶ E3.1.29.

Applicant contends that the Judge erred in his analysis of Guideline B. He states that he has no ties to Lebanon, but rather his obligations are to the United States. To the extent that Applicant is contending that the Judge did not consider record evidence favorable to him, we note that the Judge made findings about Applicant's military service. However, he also stated that the record was silent as to the qualities of that service, the reason for Applicant's disability, etc. Applicant has not rebutted the presumption that the Judge considered all of the evidence. *See, e.g.*, ISCR Case No. 10-10068 at 2 (App. Bd. Dec. 20, 2011). Regarding mitigation, the Judge made findings such that a reasonable person could infer that Applicant has ties of affection and obligation to his Lebanese relatives. When viewed in the context of the geopolitical situation in Lebanon, these findings support the Judge's conclusion that Applicant's relatives are a means through which Applicant might be subjected to coercion or be placed in a conflict of interest. Given these concerns, the Judge did not err in concluding that Applicant had not met his burden of persuasion as to mitigation. Indeed, in the whole-person analysis the Judge explicitly commented on the paucity of evidence on the issue of mitigation.

Applicant contends that the Judge erred in finding that the debts alleged in the SOR were his, citing to his reply to the SOR and his answers during a security clearance interview attributing his debts to his father. We construe this as a contention that the Government did not meet its burden to produce substantial evidence of security concerns under Guideline F. In a DOHA proceeding, the Government must produce evidence of those allegations in the SOR that have been controverted. Directive ¶ E3.1.14.

Applicant admitted all of the allegations in the SOR, including those under Guideline F. Accordingly, these allegations were not controverted. Nevertheless, the Government produced six credit reports, the most recent post-dating the SOR. Taken together, and when read in light of Applicant's admissions, these credit reports are sufficient to constitute substantial evidence of Financial Considerations security concerns. *See, e.g.*, ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010) ("It is well settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under ¶ E3.1.14 for pertinent allegations").

The Judge discussed in some detail Applicant's contention that his father was responsible for the debts alleged against him. The Judge's position appears to be that, despite having been aware of the debts for several years, Applicant had failed to take such steps that a reasonable person in his situation would have taken to clear them up, whether by demonstrating that he did not owe them or by paying or settling them. Such a dilatory response impugns Applicant's trustworthiness and reliability. Given the record that was before him, including the lack of corroboration for Applicant's contention about his father, the Judge's treatment of the Guideline F allegations 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.'" *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: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board