

KEYWORD: Guideline b; Guideline F

DIGEST: Applicant contention that he did not receive pertinent record evidence is not supported by the record. Applicant has a Ph.D., signed for receipt of the File of Relevant Material, and was provided a list of the included documents. Adverse decision affirmed.

CASENO: 10-03743.a1

DATE: 06/24/2011

DATE: June 24, 2011

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In Re:)	
)	
-----)	ISCR Case No. 10-03743
)	
)	
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 October 28, 2010, 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 April 12, 2011, after considering the record, Administrative Judge Martin H. Mogul 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 Applicant was denied due process and whether the Judge’s adverse security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following discussion, we affirm the decision of the Judge. The Judge’s favorable findings under Guideline B are not at issue in this appeal.

The Judge made the following pertinent findings of fact: Applicant is seeking a security clearance in connection with his employment by a Defense contractor. He served in the U.S. Army from 1997 to 2002. He holds a Ph.D.

The SOR lists four delinquent debts. Two, in the amounts of \$16,899 and \$55,948, are for mortgages. The remaining debts, for \$129,000 and \$71, 898, are for accounts that were charged off or placed in collection, respectively.

At one point in the past, Applicant owned seven investment rental properties. Eventually, they all went into foreclosure due to his inability to make payments. Applicant’s reply to the SOR asserts that the homes had been sold as a result of the foreclosures and that the debts had been extinguished.

In the Analysis portion of the Decision, the Judge stated that Applicant had provided no evidence to corroborate the statements in his SOR reply that the debts had been resolved. Accordingly, he concluded that Applicant had failed to meet his burden of persuasion as to mitigation.

Applicant contends that he was denied due process. Specifically, he claims that he did not receive one of the credit reports, dated September 2010. He states that, had he received this report, he would have presented additional evidence to demonstrate debt resolution. However, the File of Relevant Material (FORM) includes a list of documents produced by the Government to substantiate the allegations in the SOR. Item 8 is styled “Credit Bureau Report, dated September 20, 2010 (5 pages).” The record demonstrates that Applicant received a copy of the FORM and signed for it on December 15, 2010. The FORM advised Applicant of his right to submit a response. Additionally, the letter which accompanied the FORM advised Applicant of his opportunity to examine the complete file and to submit additional matters or make objections, as appropriate. Applicant submitted no response to the FORM. Decision at 1.

In this case, the FORM placed Applicant on notice that the Government was relying, in part, on the credit report in question. Although born in another country, Applicant is apparently fluent

in English and holds a Ph.D. There is no reason to believe that he was unable to understand the FORM or to compose a response. Under the circumstances, a reasonable person who had not received all of the Government's evidence would be expected to have lodged an objection as to the completeness of the FORM. Although *pro se* applicants cannot be expected to act like lawyers, they are expected to take timely, reasonable steps to protect their rights under the Directive. ISCR Case No. 09-01074 at 2 (App. Bd. Oct. 16, 2009). The record does not support a conclusion that Applicant was denied the due process afforded by the Directive.

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