

KEYWORD: Guideline F

DIGEST: Applicant does not cite to anything which would rebut the presumption that the Judge considered all the evidence. Adverse decision affirmed.

CASENO: 10-07080.a1

DATE: 10/12/2011

DATE: October 12, 2011

In Re:)	
)	
-----)	ISCR Case No. 10-07080
)	
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 March 16, 2011, 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 decision on the written record. On July 14, 2011, after considering the record, Administrative Judge Joan Caton Anthony 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, or misweighed, the record evidence and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant is an employee of a Government contractor. A high school graduate, he served in the National Guard from 1984 until 1990. Married for the second time, Applicant is the father of six children and one stepchild.

In 2000, Applicant filed for Chapter 7 bankruptcy protection and was discharged later that year. Since then, he has acquired numerous delinquent debts, principally for medical expenses, though others are for consumer purchases, phone services, automobile loans, etc. He attributes his financial problems to the failure of a business, to legal fees associated with his efforts to adopt two stepchildren, and to periods of unemployment. Most of his medical bills were the result of a leg fracture at a time when he had no health insurance. He has resolved some of his debts and has made payments, or other attempts at resolution, on others. He enjoys an excellent reputation for the quality of his job performance.

In her analysis, the Judge noted those circumstances which were outside Applicant's control. However, she concluded that Applicant had not demonstrated responsible action in regard to his debts.¹ She noted that Applicant had not begun to address his debt problem until his receipt of the SOR. In the whole-person analysis, the Judge stated:

Since receiving the SOR in March 2011, Applicant has attempted to pay, settle, or enter into payment plans for the majority of his delinquent debts. However, since Applicant's efforts to resolve his delinquent debts are recent, it is unclear from this record whether he will maintain responsible financial conduct in the future. His recent attempts to satisfy his delinquent debts occur after years of inaction. At issue here is not simply whether he can resolve the majority of his financial delinquencies after receiving the SOR. Of greater concern is whether his financial decisions and circumstances raise concerns about his fitness to hold a security clearance. Decision at 11.

In his appeal brief, Applicant draws attention to record evidence concerning his efforts to resolve his debts. He argues that this evidence is a sufficient reason for granting him a clearance. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.,* ISCR Case No.

¹Directive, Enclosure 2 ¶ 20(b): "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances[.]"

09-06691 at 3-4 (App. Bd. May 16, 2011). Applicant cites to nothing in the decision that would tend to rebut that presumption. Rather, he appears to take issue with the manner in which the Judge weighed the record evidence. A party's disagreement with the Judge's weighing of the evidence is not sufficient to demonstrate that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 10-03380 at 3 (App. Bd. Jul. 27, 2011). He also states that, without a clearance, he will lose his job. However, the effect that an unfavorable decision may have on an applicant is not relevant or material to a security clearance determination. *See, e.g.*, ISCR Case No. 10-06672 at 3 (App. Bd. Jul. 8, 2011).

Applicant states that his employment in an area in which the U.S. is conducting military operations impaired his ability to provide evidence in support of his request for a clearance. However, his response to the File of Relevant Material (FORM) runs to well over a hundred pages. In addition, he provided answers to DOHA interrogatories and explanatory replies to the SOR. He has pointed to nothing that he would have included but for the circumstances of his job. Neither the record nor Applicant's brief support a conclusion that his ability to present his case for mitigation was significantly impaired.

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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Chairperson, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board