

KEYWORD: Guideline F

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the record evidence. Adverse decision affirmed.

CASE NO: 10-09256

DATE: 07/27/2011

DATE: July 27, 2011

In Re:)	
)	
-----)	ISCR Case No. 10-09256
)	
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 December 22, 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 decision on the written record. On May 5, 2011, after considering the record, Administrative Judge Carol G. Ricciardello 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 security clearance decision was 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 has worked for her current employer since November 2009. She was unemployed for two months before taking her present job.

The SOR alleges, and Applicant admitted, three judgments and fifteen delinquent debts. Applicant's financial problems began about ten years ago, when her mother became ill and Applicant traveled several times a year to assist her. Her mother died in 2004, and her brother also became ill, dying in 2008.

In 2003 Applicant was laid off from her job. Although she found another one, she received less pay.

Applicant entered into an agreement with one creditor to make three monthly payments in settlement of the debt. However, she did not present evidence of actually having made a payment. She agreed to a repayment plan with another creditor, but presented evidence of only one payment pursuant to the plan, in October 2010.

In the Analysis, the Judge acknowledged Applicant's unemployment and her efforts to assist her mother and brother during their illnesses, which were circumstances outside Applicant's control which affected her financial situation. However, the Judge concluded that Applicant had not demonstrated responsible action in regard to her debts.¹ The Judge also concluded that Applicant's debts are ongoing² and that she had neither received financial counseling³ nor made good-faith efforts to resolve her debts.⁴ Accordingly, the Judge concluded that Applicant had failed to meet her burden of persuasion as to mitigation.

On appeal, Applicant contends that the Judge failed to consider all of the record evidence, for example, her efforts at debt repayment and her evidence that she had not discussed her financial problems with others, thereby lessening the chance that knowledge of her problems might prompt others to coerce her. A Judge is presumed to have considered all of the record evidence. In this case, the Judge discussed in some detail Applicant's evidence regarding her debt repayment plans, but she plausibly concluded that this evidence was not sufficient to outweigh the security concerns arising from the totality of Applicant's financial circumstances. Applicant's argument on appeal is not sufficient to demonstrate that the Judge ignored her evidence concerning her susceptibility to coercion. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. *See, e.g.*, ISCR Case No. 09-05995 at 2-3 (App. Bd. Feb. 10, 2011).

¹Directive, 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(a): "the behavior happened so long ago . . . that it is unlikely to recur . . . [.]"

³Directive, 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[.]"

⁴Directive, Enclosure 2 ¶ 20(d): "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]"

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
Member, 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