

KEYWORD: Guideline F

DIGEST: The Judge’s conclusion that Applicant can afford to pay his child support obligations is not error. Adverse decision affirmed.

CASENO: 10-09478.a1

DATE: 12/13/2011

DATE: December 13, 2011

In Re:)	
)	
-----)	ISCR Case No. 10-09478
)	
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 15, 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 hearing. On October 6, 2011, after the hearing, 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 erred in her application of the pertinent mitigating conditions and whether the Judge's whole-person analysis was in error. 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 Federal contractor. Divorced in the late 2000s, he has since remarried. He has two children from his previous marriage. Applicant holds bachelor's and master's degrees.

In the early 2000s, Applicant earned between \$200,000 and \$250,000, plus bonuses. He changed jobs, and went into the real estate business, along with an associate. The subsequent decline in the real estate market caused Applicant financial difficulties. He and his associate split up the business properties, and Applicant got loan modifications or other means of debt resolution, including spending down his savings account.

Most of the debts alleged in the SOR related to Applicant's business ventures, and the Judge resolved them in Applicant's favor. However, one allegation stated that he was behind on child support obligations arising from his divorce. Applicant is required to pay \$2,500 per month, but, in July 2009, he became unable to pay the full amount and has been paying a lesser one. In February 2009, Applicant filed a petition to reduce his child support payments in view of his changed circumstances. However, as of the close of the record, his child support obligation had not been modified. Applicant's current annual salary is \$173,000.

As stated above, the Judge cleared Applicant on his real estate delinquencies. However, in analyzing the security concern arising from his child support arrearage, she stated that his decision to pay a lesser amount each month was his own, made unilaterally, without authorization from the court. She also stated that Applicant currently has the means to pay this amount, and that in failing to do so, "he is in defiance of the court order." Decision at 8. She concluded that Applicant had not mitigated this security concern.

Applicant contends that the Judge erred in her statement that he has the means to pay the full amount of his child support obligation, arguing that the statement conflicted with her finding that, in 2009, he had become unable to make the payments. We have considered the challenged statement in light of the record as a whole. We find no evidence to contradict the Judge's conclusion that, as of the close of the record, Applicant had the financial ability to make his full child support payment, despite his different circumstances of two years prior. Though Applicant has asserted that, given his reduced salary and other expenses associated with child visitation, he can reasonably expect that his support obligation will be modified, the record does not support a conclusion of a current financial inability to pay the full amount. We find no error in the statement by the Judge. Moreover, given that Guideline F treats financial delinquencies as possible indicators of an unwillingness to

abide by rules and regulations, evidence of Applicant's failure to abide by a court order is directly relevant to an analysis of his security worthiness. Directive, Enclosure 2 ¶ 18.

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: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, 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