

KEYWORD: Guideline F

DIGEST: The Judge's findings are based on substantial evidence and are sustainable. Adverse decision affirmed.

CASENO: 11-00970.a1

DATE: 02/28/2012

DATE: February 28, 2012

In Re:)
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 -----) ISCR Case No. 11-00970
)
)
 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 April 22, 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 December 7, 2011, after the hearing, Administrative Judge Arthur E. Marshall, Jr., 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’s findings of fact were supported by substantial 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 was discharged in bankruptcy in 2003. Subsequently, she acquired additional delinquent debts, for credit cards, college expenses, telecommunications services, a repossessed vehicle, etc. Cumulatively, these debts are worth approximately \$45,000. In a response to DOHA interrogatories, Applicant stated that her debts would either be discharged or included in a repayment plan by April 2011. However, the repayment plan which she submitted was not finalized until the day of the hearing, and it included only six of the 24 debts alleged in the SOR. Applicant’s financial problems were affected by periods of unemployment and by a lack of knowledge about personal finances.

In the Analysis, the Judge noted matters outside Applicant’s control which had an impact on her financial condition. He stated that she evidenced a real intent to effectuate her repayment plan. However, he concluded that the plan was not sufficient to address the bulk of Applicant’s delinquent debts and that the record evidence was not sufficient to demonstrate that Applicant’s debts were generally the result of her unemployment.

Applicant contends that the Judge’s findings contained errors. Specifically, she argues that the Judge erred in his findings concerning her efforts to pay off two of the alleged debts. She also argues that he erred in finding that she had instituted her repayment plan the morning of the hearing. We examine a Judge’s finding to see if the finding is supported by substantial evidence, that is, “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive ¶ E3.1.32.1. In this case, we conclude that the Judge’s material findings of security concern are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record.¹ See, e.g., ISCR Case No. 10-05750 at 2 (App. Bd. Dec. 8, 2011).

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.*

¹ For example, “Q: . . . [Y]ou did not finalize—and by ‘finalize’ I mean give your bank information and set up your payment plan with [Credit Counseling Service] until earlier today . . . correct? A: That is correct.” Tr. at 69.

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