

KEYWORD: Guideline F

DIGEST: The Directive does not require a Judge to articulate an explicit credibility determination, even in cases in which he or she denies a clearance. A Judge can find an applicant to be honest and believable but nevertheless conclude that the applicant has not mitigated the security concerns in his or her case.

CASE NO: 11-02087

DATE: 03/20/2012

DATE: March 20, 2012

In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Richard L. Morris, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 9, 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 22, 2011, after the hearing, Administrative Judge LeRoy F. Foreman 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 decision contained a significant inconsistency that undermined its ultimate conclusion; whether the Judge failed to consider all of the record evidence; whether Department Counsel failed to meet the Government's burden of production; and whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge made the following pertinent findings of fact: Applicant is an employee of a Federal contractor. She was unemployed for about a month in 2005, following a job layoff. She is seeking to upgrade an existing security clearance. She was previously married, having divorced her first husband in 2001. Her former husband is about \$16,000 in arrears in his child support payments. She remarried in 2008. Applicant began falling behind on payments following her divorce. She did not make co-payments for medical treatment and her student loans became delinquent.

The SOR lists 21 delinquent debts, not only for medical expenses and student loans, but also for telephone services, a satellite television account, mortgage payments, etc. She and her husband have a monthly income of about \$5,185, with a net remainder of between \$453 and \$553.

In the Analysis, the Judge concluded that Applicant's history of delinquent debt established security concerns under Guideline F. He noted Applicant's divorce, brief period of unemployment, her former husband's child support arrearage, and her payments on some of her debts. He concluded that Applicant's circumstances raised two Guideline F mitigating conditions, 20(b)<sup>1</sup> and 20(d).<sup>2</sup> Applying these mitigating conditions, the Judge entered favorable findings on 11 of the debts alleged in the SOR. However, he went on to conclude that Applicant had not mitigated the remaining 10 debts. In the whole-person analysis, he stated that Applicant has ignored many of her debts, has no savings for unexpected expenses, and "lacks a coherent plan for gaining control of her finances." Decision at 8.

Applicant contends that the Judge's adverse decision is inconsistent with his Findings of Fact and Analysis. Specifically, she notes that he did not make an explicit finding that her presentation was not credible. She argues that the absence of a negative credibility determination is at variance with the Judge's adverse clearance decision. We have considered Applicant's argument in light of the record as a whole. The Directive requires us to defer to a Judge's credibility determination. Directive ¶ E3.1.32.1. However, the Directive does not require a Judge to articulate an explicit credibility determination, even in cases in which the Judge denies the applicant a clearance. As we noted in an earlier case, even if a Judge considers an applicant's testimony to be credible, the Judge still must consider what reasonable inferences and conclusions can be drawn from that testimony. ISCR Case No. 99-0519 at 12 (App. Bd. Feb. 23, 2001). It is not inconsistent for a Judge to find an

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<sup>1</sup>Directive, 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[.]"

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

applicant to be honest and believable but, nevertheless, reasonably to conclude that the applicant's presentation is not sufficient to meet his or her burden of persuasion as to mitigation. In the case at issue here, the Judge did not address Applicant's credibility *per se*; however, his detailed, unchallenged findings, considered alongside Applicant's admissions to the SOR, support his conclusion that Applicant had not demonstrated responsible action in regard to several of her debts or a good faith effort to resolve them.

Applicant cites to her testimony that she has held a clearance for several years without incident or concern. This was evidence the Judge was bound to consider, along with all the other evidence in the record. However, prior favorable adjudications or a good security record are not dispositive of an applicant's security concerns. Even years of safeguarding national security information may not be sufficient to mitigate a history of ongoing, significant delinquent debt. *See, e.g.*, ISCR Case No. 08-00435 at 3 (App. Bd. Jan. 22, 2009) (The applicant's nine years experience in safeguarding classified information were not sufficient to undermine the Judge's adverse decision under Guideline F). In the case under consideration here, the Judge acknowledged Applicant's good security record but reasonably explained his conclusion that she had not mitigated the concern arising from ten of her alleged delinquent debts. As we stated in ISCR Case No. 08-00435 *supra*, the Government need not wait until an individual mishandles or fails to safeguard classified information before it can make an unfavorable security clearance decision.

Applicant contends that the Judge ignored favorable record evidence concerning her character, honesty, and reliability. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-10068 at 2 (App. Bd. Dec. 20, 2011). However, the Judge's Analysis addressed the favorable aspects of the record that was before him, including evidence of Applicant's maturity, educational attainments, security record, and efforts to pay off some of her debts. Applicant's argument on appeal is not sufficient to rebut the presumption that the Judge considered all of the record evidence. Neither is it sufficient to demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law.

Applicant contends that Department Counsel failed to present evidence that Applicant has a "potential for exploitation, pressure, coercion, or duress." We construe this argument to mean that Department Counsel failed to meet its burden of production. In a DOHA proceeding, the Government must present substantial evidence of facts alleged in the SOR that have been controverted. Substantial evidence 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. 1.14; Directive ¶ E3.1.32.1. *See also* ISCR Case No. 08-06859 at 4 (App. Bd. Oct. 29, 2010). In this case, Applicant admitted all of the SOR allegations except two. The two she did not admit were among those which the Judge resolved in her favor. Accordingly, the remaining allegations were not controverted, relieving the Government of any burden of production. Nevertheless, the Government presented substantial evidence of Applicant's financial delinquencies, in the form of Applicant's answers to two sets of DOHA interrogatories, three credit reports, and the security clearance application. Taken together, these documents, along with Applicant's admissions, set forth security concerns under Guideline F. The Government was under no further burden of production.

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