

KEYWORD: Guideline F

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the record evidence. Applicant failed to demonstrate that the Judge mis-weighed the evidence. The Judge’s whole-person analysis complies with the requirements of the Directive. Adverse decision affirmed.

CASE NO: 11-02512.a1

DATE: 08/14/2012

DATE: August 14, 2012

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In Re:)	
)	
-----)	ISCR Case No. 11-02512
)	
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 January 11, 2012, 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 June 11, 2012, after the hearing, Administrative Judge Robert E. Coacher 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; whether the Judge mis-weighed the evidence; whether the Judge’s whole-

person analysis was erroneous; 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 works for a Defense contractor as an aircraft loadmaster. He is married, with an adult child from a previous marriage and two adult stepchildren. He held a clearance during his 16 years of Air Force service.

The SOR alleges a Chapter 7 bankruptcy discharge, two mortgage foreclosures, and seven delinquent debts, for credit cards, utility services, etc., totaling about \$23,303. Applicant contends that his divorce from his first wife led to the bankruptcy, due to high attorney fees. After he left the Air Force, Applicant worked in real estate. He purchased several houses and then rented them, using the rental amounts to finance the purchase of additional properties. However, the real estate market collapsed in 2005, and Applicant became unable either to make his mortgage payments or sell his properties. In addition to the debts listed in the SOR, Applicant owes money to the IRS for unpaid taxes pertaining to tax years 2005 to 2007. Applicant has about \$320,000 in home equity. He has not sought financial counseling except for having sought information about loan modification. The Judge noted Applicant's testimony that he had contacted a creditor concerning a credit card debt and that he did not owe certain SOR debts. However, the Judge also found that this testimony was not corroborated.

In the Analysis, the Judge stated that Applicant's mortgages are both recent and multiple and that the other delinquent debts are ongoing.¹ Given that fluctuations in the price of real estate are foreseeable risks, the Judge concluded that Applicant had not demonstrated that his mortgage foreclosures arose from circumstances beyond his control.² The Judge noted Applicant's lack of financial counseling³ and stated that Applicant had not corroborated his dispute of certain of his debts.⁴ In the whole-person analysis, the Judge noted Applicant's service to the Air Force, but he concluded that Applicant's financial track record left him with doubts about Applicant's worthiness for a clearance.

¹Directive, Enclosure 2 ¶ 20(a): "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment[.]" Unpaid debts are a continuing course of conduct and, therefore, cannot be considered as having occurred so long ago as to warrant the application of this mitigating condition. *See, e.g.*, ISCR Case No. 09-01309 at 4 (App. Bd. Apr. 29, 2010).

²Directive, 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[.]"

³Directive, Enclosure 2 ¶ 20(c): "the person has received or is receiving financial counseling . . ."

⁴ Directive, Enclosure 2 ¶ 20(e): "the individual has a reasonable basis to dispute the legitimacy of the past-due debt . . . and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue[.]" The Judge found in Applicant's favor regarding one debt that Applicant claimed not to owe. He noted that the debt does not appear on Applicant's most recent credit report and found the pertinent entry on an earlier credit report to be confusing. Decision at 6.

Applicant's brief cites to evidence of his divorce, the real estate crash, and his efforts to resolve his debts. To the extent that he is contending that the Judge failed to consider the cited evidence, we note that a Judge is presumed to have considered all of the evidence in the record. *See, e.g.,* ISCR Case No. 09-05485 at 3 (App. Bd. Jan. 20, 2011). The Judge discussed Applicant's divorce, the problems with the economy which had an impact on his financial situation, and Applicant's testimony about his efforts at debt resolution and/or dispute. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. Neither has he demonstrated that the Judge weighed the evidence in a manner that it arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 08-11345 at 3 (App. Bd. Oct. 6, 2010). The Judge's whole-person analysis complies with the requirements of Directive, Enclosure 2 ¶ 2 (a), in that the Judge considered the totality of Applicant's conduct in reaching his decision. *See, e.g.,* ISCR Case No. 10-00141 at 2 (App. Bd. Apr. 28, 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. 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