

KEYWORD: Guideline F

DIGEST: There is no record evidence to support Applicant’s contention that Department Counsel indicated he would not be held responsible for a mortgage debt. Applicant has not rebutted the presumption that the Judge considered all the evidence. The Judge’s findings and conclusions are supported by the record evidence. Adverse decision affirmed

CASENO: 11-03402.a1

DATE: 03/29/2012

DATE: March 29, 2012

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In Re:)	
)	
-----)	ISCR Case No. 11-03402
)	
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 August 11, 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 January 4, 2012, after the hearing, Administrative Judge Mark Harvey 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 Department Counsel advised Applicant that a mortgage debt would not be held against him and whether the Judge's decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge made the following pertinent findings of fact: Applicant was in the Navy from 1985 until his retirement in 2005 as a Chief Petty Officer (E-7). He married in 1985, separated from his wife in 2003, and divorced her in 2005. Applicant has numerous delinquent debts, for such things as telecommunications services, charged-off accounts owed to banks, and mortgage payments. He attributed his financial problems to his marital breakup and consequent loss of income, his wife having earned more money than he did. He was ordered by the Court to pay off some of the credit card expenses, and he was required to pay spousal support. He also experienced unemployment following his retirement from the Navy. Applicant's debts were current until 2007. However, the adjustable rate mortgages on his house resulted in an increase in his monthly payments, and the payments became delinquent in 2008. The house eventually went into foreclosure. He used credit cards to pay day-to-day living expenses.

Applicant consulted an attorney, but stopped working with him when the attorney recommended bankruptcy protection. He has provided care to his elderly mother and has supported other family members as well. He is current on his expenses. However, he did not provide documentary evidence of negotiations with creditors. Applicant received numerous decorations while in the Navy, and he enjoys an excellent reputation for the quality of his job performance, trustworthiness, and integrity.

In the Analysis, the Judge noted circumstances beyond Applicant's control that affected his financial problem, such as his divorce and unemployment. He also cited to evidence of Applicant's good military record and to his character references. However, the Judge concluded that Applicant had not demonstrated responsible action regarding his debts, citing a paucity of evidence showing payments, negotiations, etc. Neither had Applicant shown a track record of debt resolution. The Judge stated that Applicant's financial circumstances have been stable since 2005, yet he has not made significant efforts at debt repayment. The Judge opined that Applicant could free up money for debt repayment by reducing his living expenses. As it is, the Judge stated that Applicant had submitted no evidence that any of the SOR creditors had received payment.

Applicant asserts in his appeal brief, "All of the legal advice I have received and research I have done, including a casual conversation after my . . . hearing with [Department Counsel], indicate that I won't be held responsible for the debt." There is no record of such a conversation after the hearing. While it is true that, during the hearing, Department Counsel, in a colloquy with the Judge, did discuss at considerable length the fine points of state law as it pertains to the debt, Department Counsel was not in a position to provide legal advice to an opposing party Applicant. Furthermore, given Appeal Board precedent that "reliance on the uncollectability of a debt does not

constitute a good-faith effort to resolve that debt within the meaning of the Directive”(See ISCR Case No. 07-16841 at 4 (App. Bd. Dec. 29, 2008)), the Judge did not err by finding against Applicant with regard to the debt. Applicant has not demonstrated that he was denied due process or that the Judge erred.

Applicant contends that the Judge failed to consider favorable evidence, such as his good credit rating until the foreclosure, the effect of the housing crisis and of his marital problems on his finances, and poor advice he received from an attorney. A Judge is presumed to have considered all of the record evidence. See, e.g., ISCR Case No. 10-10068 at 2 (App. Bd. Dec. 20, 2011). The Judge discussed Applicant’s marital separation in some detail. He also made appropriate findings concerning Applicant’s foreclosure and his attorney’s advice. Applicant has not demonstrated that, if the Judge had discussed these things in more detail, that he would have produced a different decision. Applicant has not rebutted the presumption that the Judge considered all of the evidence.

Applicant takes issue with some of the Judge’s statements in the whole-person analysis, for example, that it is not clear why Applicant has not addressed his smaller debts, that Applicant should reduce his living expenses, that his financial situation has been stable since 2005, etc. We have considered Applicant’s argument in light of the record as a whole. The statements cited in Applicant’s brief are reasonable conclusions drawn from the evidence that was before the Judge. We find no reason to conclude that they were erroneous or that, had the Judge not made these statements, he would have produced a different decision.

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: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairperson, 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