

DATE: October 13, 2009

_____)	
In Re:)	
)	
-----)	ISCR Case No. 08-09899
)	
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 March 18, 2009, 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 August 24, 2009, 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 certain of the Judge’s factual findings are erroneous; whether the Judge gave appropriate consideration to his evidence in mitigation; and whether the Judge’s adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant purchased a home in 1997, using credit cards and loans to furnish it. Discovering that he would not be able to pay off the debt he had incurred, he filed for bankruptcy. He initially filed for Chapter 13 bankruptcy protection but had trouble making payments under it. He had his filing converted to Chapter 7 and was discharged in 2001. The same year, he worked with a mortgage company to “short sale” his house, which resulted in a \$25,000 loss that the bank agreed to write off.

In 2004 Applicant purchased a home for \$225,000, and, two years later, he purchased two rental properties for \$80,000 a piece. He made no down payments in buying these two rental properties. He neglected to have these properties inspected prior to the purchase, and later he had to expend \$16,000 for repairs. He put these expenses on his credit cards. After tenants damaged the houses, Applicant charged another \$15,000 on his credit cards for repairs. He stopped making mortgage payments on these houses in 2008, and they have gone into foreclosure.

Applicant entered into a relationship with a debt elimination company, which entails his depositing money each month to be used settling his debts. However, he has not participated in financial counseling. Beginning in 2004, Applicant carried 18 credit cards, which he used to maintain his investment properties. He also had some personal loans. Applicant did not provide documentation to support his claim that he had paid off some of his debts.

Applicant contends that the Judge erred in some of her factual findings. For example, he takes issue with the Judge’s statement that he could not afford the rental properties and that he had used credit cards to pay expenses associated with maintaining them. On this latter point, he contends that he had used his credit cards only after having depleted investment funds he had set aside for maintenance expenses. After reviewing the record, the Board concludes that the Judge’s material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Applicant has not identified any harmful error likely to change the outcome of the case. Considering the record evidence as a whole, the Judge’s material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007).

In support of the appeal Applicant has submitted new matters not contained in the record, for example information about a job loss. The Board cannot consider this new evidence. *See* Directive ¶ E3.1.29. (“No new evidence shall be received or considered by the Appeal Board.”). *See also* ISCR Case No. 08-06518 at 2 (App. Bd. Mar. 3, 2009). Applicant appears to contend that the Judge did not give proper consideration to his evidence in mitigation. However, a Judge is presumed to have considered all the evidence in the record. Neither Applicant’s presentation on appeal nor the record rebut that presumption. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009); ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008). The record does not support an allegation that the Judge excluded evidence proffered by Applicant. The Board notes that the Judge did explicitly consider that Applicant’s difficulties with the rental properties were due in part to tenants having damaged the houses and that Applicant had entered into a debt repayment plan with the above-referenced company. She also found that one of the mortgage debts in the SOR had been resolved through foreclosure. However, the Judge also noted the repetitive nature of Applicant’s financial problems, in that Applicant purchased two rental homes after having been discharged in

a bankruptcy action that was, in large measure, the result of debt connected to real estate. She concluded that Applicant's conduct in managing his financial affairs demonstrated a lack of judgement, in part because he did not anticipate the foreseeable costs of maintaining rental property, including costs necessitated by tenant misuse.

The Board concludes 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 decision that "it is not clearly in the interests of national security to grant Applicant eligibility for a security clearance" is sustainable on this record. Decision at 10. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("The general standard is that a clearance may be granted only when 'clearly consistent with the interests 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: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board