

KEYWORD: Guideline F; Guideline E

DIGEST: A Judge’s findings must be based on substantial record evidence. There is a rebuttable presumption that the Judge considered all the record evidence. Adverse decision affirmed.

CASENO: 06-07247.a1

DATE: 02/13/2008

DATE: February 13, 2008

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 06-07247
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**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 December 11, 2006, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations)

and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On September 28, 2007, after considering the record, Administrative Judge Christopher Graham denied Applicant's request for a security clearance. Applicant filed a timely appeal 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 were based upon substantial record evidence; and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge found that Applicant had numerous delinquent debts and that he had not corroborated his claim to have begun paying them off earlier than 2007. The Judge also found that Applicant answered "no" to Question 37 of a Security Clearance Application completed in March 2005, which asked if he had had any judgements against him in the previous seven years. The Judge found that this answer was untrue, insofar as a creditor had obtained a judgement against Applicant in May 2003, and Applicant was aware of this at the time he completed the application.

A Judge's findings must be based upon substantial record evidence. Directive ¶ E3.1.32.1; *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620-21 (1966). We have examined the Judge's findings in light of the record and conclude that even if there are errors, they are harmless in that they are minor and would not reasonably have affected the outcome of the case. *See* ISCR Case No. 01-23362 (App. Bd. Jun. 5, 2006). Furthermore, we conclude that the Judge's decision that Applicant failed to mitigate the Guideline F security concerns is sustainable on this record. *See* Directive ¶ E3.1.15 ("The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant and proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.") On appeal, Applicant claims the Judge did not consider evidence contained in his written submissions. There is a rebuttable presumption that a Judge has considered all the record evidence. *See* ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005). Applicant fails to rebut that presumption. In light of the forgoing, we do not need to address the Guideline E concerns.

### **Order**

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett  
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