

KEYWORD: Guideline F

DIGEST: Applicant has numerous delinquent debts totaling \$64,000. The Judge has drawn a rational connection between the facts found and his ultimate unfavorable decision. Adverse decision reversed.

CASENO: 07-10729.a1

DATE: 08/29/2008

DATE: August 29, 2008

_____)	
In Re:)	
)	
-----)	ISCR Case No. 07-10729
)	
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 29, 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 June 4, 2008, after the hearing, Administrative Judge Martin H. Mogul 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 findings of fact were based upon substantial record evidence; and whether the Judge erred in his application of the Guideline F mitigating conditions. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a 51 year old employee of a defense contractor. He is married to his second wife, though they live separately. He served in the U.S. military from 1970 to 1980.

Applicant has numerous delinquent debts, the amounts alleged in the SOR totaling nearly \$64,000. A large number of these debts were actually incurred by Applicant’s wife, due to medical bills and to her writing checks with insufficient funds, etc. These are debts for which Applicant is legally responsible, along with his wife. In the Analysis section of his decision, the Judge stated that Applicant has not demonstrated a good faith effort to resolve his debts. Furthermore, in performing his whole-person analysis, the Judge concluded that the record evidence of Applicant’s debts left him with serious doubt as to Applicant’s fitness for a clearance. We have examined the Judge’s findings in light of the record as a whole. The Judge’s material findings of security concern are based upon substantial record evidence. *See* Directive ¶ E3.1.32.1. (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 record.”)

We have considered Applicant’s arguments on appeal and conclude that, to the extent that the Judge’s decision contains error, it is harmless in that, even if such error did not occur, the Judge would have decided the case in the same way.¹ *See, e. g.*, ISCR Case No. 06-07247 at 2 (App. Bd. Feb. 13, 2008). The Judge has drawn “a rational connection between the facts found” and his ultimate adverse security clearance decision, both as regards the Guideline F mitigating conditions and the whole-person analysis. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). *See also 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 consistent with national security to grant Applicant eligibility

¹In his decision, the Judge stated that Applicant had not acted responsibly in regard to his debts “since he has made no effort to legally end his marriage with his wife, despite being separated from her for more than five years.” Decision at 8. It is beyond the jurisdiction of these proceedings to evaluate an applicant’s (otherwise permissible) decisions regarding marriage and divorce.

for a security clearance” is sustainable on this record. Decision at 10. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra’anan

Michael Y. Ra’anan
Administrative Judge
Chairman, 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