

KEYWORD: Guideline F

DIGEST: The Judge found that Applicant has substantial delinquent debts for child support and cancellation of a lease. The Judge's conclusions in light of findings are sustainable. Adverse decision affirmed.

CASENO: 07-14738.a1

DATE: 10/28/2008

DATE: October 28, 2008

In Re:)	
)	
-----)	ISCR Case No. 07-14738
)	
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 30, 2008 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 July 31, 2008, after the hearing, Administrative Judge Charles D. Ablard 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 the Judge’s application of the Guideline F mitigating conditions was erroneous and whether the Judge’s whole-person analysis was erroneous.¹ Finding no error, we affirm.

The Judge found that Applicant has a delinquent debt of \$4,965 arising from his cancellation of an apartment lease. He also found that Applicant has delinquent debts for child support obligations for two of his three children. The combined amount of the delinquency for the two child support debts is approximately \$9,000. The Judge properly concluded that Applicant’s case raised security concerns under Guideline F.² The record demonstrates that he considered appropriate mitigating conditions.³ However, the Judge concluded that Applicant had failed to meet his burden of persuasion as to the debts described above. *See* Directive ¶ E3.1.15. Viewed in light of the record as a whole, this conclusion is sustainable. The Board has also examined the Judge’s whole-person analysis, in which he concluded that Applicant had not established a sufficient track record of fiscal responsibility to justify the award of a security clearance. This is also sustainable. *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)). Viewed in light of the standard set forth in *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’”), the Judge’s decision is neither arbitrary, capricious, nor contrary to law. In support of his appeal Applicant has submitted new matters not contained in the record, which the Board cannot consider. *See* Directive ¶ E3.1.29. (“No new evidence shall be received or considered by the Appeal Board.”)

¹The Judge’s favorable decision under SOR subparagraphs 1(a), 1(c-d), and 1(g-j) is not at issue in this appeal.

²Directive ¶ E2.19(a): “inability or unwillingness to satisfy debts;” Directive ¶ E2.19(c): “a history of not meeting financial obligations[.]”

³Directive ¶ E2.20(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 current reliability, trustworthiness, or good judgement;” Directive ¶ E2.20(b): “the conditions that resulted in the financial problem were largely beyond the persons’s control . . . and the individual acted responsibly under the circumstances;” Directive ¶ E2.20(d): “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]”

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Jeffery 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