

KEYWORD: Guideline F

DIGEST: The Judge found Applicant has numerous delinquent debts which were only partly mitigated. Adverse decision affirmed.

CASENO: 08-07359.a1

DATE: 10/13/2009

DATE: October 13, 2009

_____)	
In Re:)	
)	
-----)	ISCR Case No. 08-07359
)	
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

James S. DelSordo, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On February 17, 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 July 17, 2009, after the hearing, Administrative Judge Mary E. Henry 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 the Judge failed properly to apply the Guideline F mitigating conditions and whether the Judge mis-weighed the evidence. Finding no error, we affirm.

The Judge found that Applicant has numerous delinquent debts, for such matters as a state tax lien, medical bills, credit card bills, and an automobile loan. Her debts were affected by her husband’s loss of employment as well as her own and by the fact that, at the time he managed the household finances, her husband did not keep her apprised of their financial situation. For example, he did not pay their state income taxes for 2003, 2004, and 2005. In deciding the case adversely to Applicant, the Judge took into account the extent to which Applicant’s financial problems were affected by circumstances beyond her control (including job loss and underemployment). However, the Judge also noted that Applicant’s debts arose, in part, due to poor financial management, and that she has not sought financial counseling. The Judge further noted that Applicant continues to struggle with her bills and that she lacks a “definitive plan of action” to address her financial problems. Decision at 8.

Applicant contends that the Judge did not consider evidence which she believes mitigates the security concerns in her case. However, a Judge is presumed to have considered all the evidence in the record, and Applicant’s brief is not sufficient to 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). Applicant has failed to demonstrate that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

After reviewing the record, 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 consistent with the national interest to grant Applicant eligibility for a security clearance” is sustainable on this record. Decision at 9. *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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board