

KEYWORD: Guideline F

DIGEST: Applicant has not demonstrated that the evidence before the Judge was insufficiently current or that the processing time prejudiced his ability to present a evidence in mitigation. Furthermore the Judge has no obligation to gather information for either party. Rather it is the responsibility of each party to present evidence to the Judge. Adverse decision affirmed.

CASENO: 08-10170.a1

DATE: 07/08/2011

DATE: July 8, 2011

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In Re:)	
)	
-----)	ISCR Case No. 08-10170
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)	
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 April 23, 2010, 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 decision on the written record. On April 11, 2011, after considering the record, Administrative Judge Roger C. Wesley 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 to consider, or misweighed, record evidence; whether Applicant was prejudiced by unreasonable delay in processing his security clearance application (SCA); and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge’s decision.

The Judge made the following pertinent findings of fact: Applicant is a market manager for a Defense contractor. He served in the Air Force from 1984 until his retirement 20 years later. He held a security clearance while on active duty. Applicant is responsible for each of the nine delinquent debts alleged in the SOR that have been charged off or otherwise neither paid nor resolved. Applicant’s claims to have paid off most of these debts, except for two, were not corroborated. Applicant’s debts were accumulated during his marriage. Some of them were jointly owed with his wife and some were in Applicant’s name alone.

In the Analysis portion of the Decision, the Judge concluded that, except for the two paid debts, Applicant had failed to demonstrate responsible action in regard to his financial problems. He noted that Applicant has been employed for two-and-a-half years and has the capability to address his financial problems. The Judge stated that “the limited amount of information available for consideration” precluded a conclusion that Applicant had met his burden of persuasion as to mitigation. Decision at 6.

Applicant claims that his case took too long to process. He states that he completed his SCA in 2007 and that, as a consequence of alleged delay, the Judge’s decision was based upon outdated credit report information. We resolve this issue adversely to Applicant. The record contains four credit reports. Three of them, dated April 2010, November 2009, and September 2007 respectively, were included by the Government in the File of Relevant Material (FORM). The fourth, dated February 8, 2011, was provided by Applicant in his response to the FORM. These reports, considered together in light of the other record evidence, support the Judge’s findings and conclusions. Applicant has provided no reason to believe that the evidence before the Judge was not reasonably up to date or that the time involved in processing his case prejudiced his ability to present evidence in mitigation. *See* ISCR Case No. 04-06517 at 3 (App. Bd. Oct. 21, 2005). Moreover, there are no statutes of limitations or analogous deadlines for how soon a SOR must be issued after submission of a SCA, after a subject interview, or after the occurrence of other processing milestones. *See, e.g.,* ISCR Case No. 01-07360 at 3 (App. Bd. Apr. 10, 2002). Applicant has failed to demonstrate that he was prejudiced by the manner in which his case was processed.

Applicant also contends that the Judge should have gathered more information to show that his financial situation has improved. However,

[u]nder the Directive, the Administrative Judge has no obligation to gather information for either party in a case. The Directive makes clear that it is the responsibility of each party to present evidence for a Judge to consider in a case. Furthermore, the correspondence sent to Applicant with the [FORM] put him on adequate notice that it was his responsibility to gather and present evidence for the Judge to consider in his case. ISCR Case No. 03-00759 at 3 (App. Bd. Sep. 16, 2005). (internal citations omitted)

Applicant contends that the Judge failed to consider record evidence favorable to him, such as his military career, his having previously held a security clearance, and improvements in his credit score. However, a Judge is presumed to have considered all of the record evidence. Applicant's appeal presentation is not sufficient to rebut that presumption. Neither is it sufficient 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. 10-01168 at 2 (App. Bd. Apr. 22, 2011). In support of his appeal, Applicant presents matters not contained in the record, such as information about his credit score obtained after the date of the Judge's decision. We cannot consider this new evidence on appeal. *See* Directive ¶ E3.1.29. ("No new evidence shall be received or considered by the Appeal Board.") *See also* ISCR Case No. 09-07792 at 2 (App. Bd. May 10, 2011).

The record supports a conclusion 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 adverse decision is sustainable on this record. "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'an

Michael Y. Ra'an

Administrative Judge

Chairperson, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

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