

DATE: December 10, 2009

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In Re:)	
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-----)	ISCR Case No. 08-10936
)	
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 May 27, 2009, 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). Department Counsel requested a hearing.¹ On September 21, 2009, after the hearing, Administrative Judge Thomas M. Crean denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

¹Decision at 2. See Directive E3.1.3: “A letter of instruction with the SOR shall explain that applicant or Department Counsel may request a hearing.” The Department Counsel’s request for a hearing shall be within 20 days of receipt of an applicant’s answer to the SOR. Directive E3.1.7.

Applicant raised the following issues on appeal: whether he was denied due process because he was not represented by counsel; whether the Judge failed to consider all the record evidence; whether the Judge's whole-person analysis was erroneous; 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. Of the 29 debts listed in the SOR, Applicant had paid off only one. For the others he had made no attempt to make payments, despite having a sufficient amount of money to do so. Additionally, Applicant answered "no" to questions on the security clearance application (SCA) inquiring about debts delinquent over 180 days and about whether he currently had debts delinquent for 90 days. These answers were not true. On a SCA question concerning charges or convictions related to alcohol or drugs, Applicant omitted four charges for illegal possession of alcohol; public intoxication and resisting arrest; possession of marijuana; and public intoxication and domestic violence.

Regarding the delinquent debts, the Judge concluded, *inter alia*, that Applicant had not demonstrated any effort to pay off his remaining debts, that he had not presented evidence of a plan to do so, and that he had not demonstrated that his failure to pay his debts is due to causes outside his control. Regarding the omissions on the SOR, the Judge stated that the questions were clear and unambiguous; that Applicant's educational attainments were such that he should have been able to understand their meaning; and that he had provided no credible reason for having omitted the information in question.² Accordingly, the Judge concluded that Applicant had failed to mitigate the security concerns arising from his financial condition and from his omissions to the SOR.

Applicant contends that his ability to present his case was hampered by his lack of representation. The record demonstrates, however, that prior to the hearing Applicant was informed in writing of his rights, including the right to counsel or some other representative. Furthermore, at the beginning of the hearing the Judge asked Applicant if he understood his right to counsel and if he intended to represent himself. Applicant answered "yes" to both questions. Tr. at 6. A review of the entire record discloses no basis to conclude that Applicant was denied the rights due him under the Directive or that he had not been adequately advised of those rights. ISCR Case No. 08-03110 at 2 (App. Bd. Jan. 27, 2009). "Having decided to represent himself during the proceedings below, Applicant cannot fairly complain about the quality of his self-representation or seek to be relieved of the consequences of his decision to represent himself." ISCR Case No. 08-03110 at 2 (App. Bd. Jan. 27, 2009).

Applicant also contends that the Judge failed to consider his explanations for the conduct giving rise to the security concerns in this case. However, a Judge is presumed to have considered

²Q: [W]hy didn't you mark down [on the SCA] that you had bills that were outstanding?" . . . A: Honestly, I don't know why I didn't. . . I don't think I was trying to hide it. It's just I guess I needed to get a Credit Report and see what my credit was and you had brought it to my attention." Tr. at 26. "Q: Why did you only list one of your arrests and not the other four in your [SCA]? A: I have no excuse. I don't know why I didn't. . . Maybe it was so long ago I forgot. I don't want to say I lied. I just didn't do it. I don't know if I was in a hurry to fill out the questionnaire. But you all found it pretty quick and straightened me out." Tr. at 35.

all the evidence in the record. *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 pointed to nothing in the record that would rebut the presumption. Furthermore, a party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation thereof, is not sufficient to demonstrate the Judge either failed to consider all of the evidence or mis-weighed it. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). In his appeal brief, Applicant submits 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"). *See also* ISCR Case No. 08-06875 at 2 (App. Bd. Oct. 29, 2009); ISCR Case No. 08-06518 at 2 (App. Bd. Mar. 3, 2009); ADP Case No. 08-03721 at 2 (App. Bd. Oct. 28, 2009).

After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, both as to the mitigating conditions and the whole-person factors. The decision draws "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 national security to grant Applicant eligibility for a security clearance" is sustainable on this record. Decision at 9. "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).

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