

KEYWORD: Guideline F

DIGEST: The Board cannot consider new evidence. Rather, we evaluate a Judge's decision in light of the evidence available to him or her at the close of the record. Adverse decision affirmed.

CASENO: 08-11531.a1

DATE: 04/16/2010

DATE: April 16, 2010

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In Re:)	
)	
-----)	ISCR Case No. 08-11531
)	
)	
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 June 4, 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 February 4, 2010, after the hearing, Administrative Judge Erin C. Hogan 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’s findings of fact were supported by substantial record evidence; whether the Judge failed to consider record evidence favorable to Applicant; and whether the Judge’s adverse security clearance decision was arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge found that Applicant had numerous delinquent debts for such things as credit cards, personal loans, medical bills, an overdrawn bank account, etc. He has been discharged in Chapter 7 bankruptcy twice, once in 1993 and again in 2000. Although Applicant experienced unemployment during the entire year 2003, he has been continuously employed since 2004. The Judge stated that, assuming the information about his income and expenditures is correct, he has a negative cash flow each month. In the Analysis portion of her decision, the Judge considered Applicant’s period of unemployment. However, she noted that he had experienced difficulty managing his finances for over 17 years and that he had failed to demonstrate responsible action in regard to his debts. While acknowledging that Applicant has paid off some of his debts, the Judge concluded nevertheless that these positive steps were outweighed by the extent of his remaining debt and his “long history of financial irresponsibility[.]” Decision at 8. Accordingly, she concluded that Applicant had failed to mitigate the security concerns in his case.

In support of his appeal, Applicant submits new evidence to the effect that he entered into a debt management program after the close of the record. He avers that many of the debts which the Judge found against him are covered under this plan. However, the Board cannot consider this new evidence. *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). Rather, we evaluate a Judge’s decision in light of the evidence available to him or her at the close of the record.

Regarding Applicant’s claim that the Judge did not consider evidence which he submitted in his own behalf, a Judge is presumed to have considered 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). In this case, the Judge’s findings of fact and analysis demonstrate that she did consider, among other things, Applicant’s period of unemployment as a contributing factor to his financial difficulties and the fact that he had paid off some of his debts. However, she reasonably explained why Applicant’s favorable evidence was not sufficient to meet his burden of persuasion as to mitigation. *See* Directive ¶ E3.1.15. (After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns.) Applicant’s brief on appeal is not sufficient to rebut the presumption that the Judge considered the entire record. Neither does it demonstrate that the Judge weighed the evidence in a manner which is arbitrary,

capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-21819 at 2 (App. Bd. Aug. 13, 2009); 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 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).

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: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board