

of the pertinent mitigating conditions and whether the Judge failed properly to apply the whole-person factors.¹ Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is an engineer working for a Defense contractor. He has worked for his current employer or a predecessor company since 1978.

Applicant has filed for bankruptcy four times since 1984. He was discharged twice in Chapter 7 bankruptcy, in 1985 and again in 1998. His other two filings, both under Chapter 13, were dismissed, one in 1989 and the other in 2004. The 1989 dismissal was due to non-payment, and the 2004 was voluntary.

In addition to the bankruptcy filings, the Judge also found that Applicant had, at the close of the record, two delinquent debts. The first was for \$14,114 owed due to the repossession of a car. Applicant arranged a settlement of this debt with the creditor, agreeing to pay monthly installments of \$150 toward a final settled amount of \$7,276. At the close of the record Applicant had made four payments.

The second delinquent debt was in the amount of \$1,180, owed to a check-cashing company. Although Applicant initially denied this debt, based on his testimony at the hearing, the Judge concluded that the debt was legitimately his and that it was still owed.

Applicant was disciplined by his employer in 2008 for misusing a company credit card by making personal charges upon it in addition to charges related to company business. Applicant enjoys a good reputation for job performance, honesty, and trustworthiness.

Applicant contends that the Judge erred in his application of the Guideline F mitigating conditions. For example, he argues that his latest bankruptcy filing occurred in 2003, which was several years prior to the close of the record. Therefore, he believes that his financial problems occurred long ago and should be mitigated by the passage of time.² The record demonstrates, however, that while the Judge acknowledged record evidence concerning the timing of the latest bankruptcy filing, he also noted that, since that filing, Applicant acquired more delinquent debts, two significant ones remaining unpaid. Accordingly, he reasonably concluded that Applicant had failed to demonstrate that the financial problems were behind him or were unlikely to recur.

The Judge also acknowledged that Applicant's financial troubles were affected by circumstances outside his control, for example a period of unemployment, medical expenses, and

¹The Judge's favorable findings under Guideline E are not at issue in this appeal.

²See Directive ¶ 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 judgment[.]"

a diminution in employer-provided reimbursement for travel expenses.³ However, the Judge noted other record evidence which was not so favorable to Applicant, for example testimony that Applicant mismanaged money, that he did not balance his checking account, that he did not live within a budget, and that he misused the company credit card.⁴ He concluded that Applicant had failed to demonstrate responsible behavior in regard to his debts. After examining the Judge's decision in light of the record as a whole, we conclude that he did not err in denying favorable application to the Guideline F mitigating conditions.

Applicant contends that the Judge did not properly apply the whole-person factors. He contends, for example, that the Judge did not consider that he had paid off debts not listed in the SOR. He also argues that the Judge failed to extend proper consideration to record evidence of his good work habits, his character, and his having held a clearance for over 30 years without incident or concern. However, a Judge is presumed to have considered all of the record evidence. *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). The Judge acknowledged that Applicant had paid off many of the debts alleged in the SOR. However, the fact that he did not explicitly discuss non-SOR debts does not undermine his unfavorable conclusion as to mitigation. Even if he had explicitly discussed these other debts,⁵ there is little likelihood that he would have found their resolution sufficient to outweigh evidence that Applicant continued to acquire delinquent debt despite having twice been discharged in bankruptcy, and other evidence of financial irresponsibility.

Furthermore, while the Judge found that Applicant enjoyed a good reputation for character and performance of duty, Applicant has provided no reason to believe that he weighed this positive evidence in a manner that is arbitrary capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-21819 at 2 (App. Bd. Aug. 13, 2009). We conclude that the Judge's whole person analysis complies with the requirements of Directive, Enclosure 2 ¶ 2, in that the Judge considered the totality of Applicant's conduct in reaching his decision. *See* ISCR Case No. 08-02464 at 3 (App. Bd. Jul. 16, 2009); ISCR Case No. 05-03948 at 3-4 (App. Bd. May 21, 2007); ISCR Case No. 04-09959 at 6 (App. Bd. May 19, 2006).

After reviewing the record, we conclude 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

³Directive ¶ E2. 20(b): "the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances[.]"

⁴The misuse of the credit card formed the basis of the two Guideline E allegations, which the Judge resolved in Applicant's favor. However, the Judge also stated that, despite his conclusion under Guideline E, he would consider this misconduct in the context of Applicant's financial situation, his case for mitigation, and the whole-person analysis. Decision at 8, n. 19.

⁵A Judge is not required to discuss each and every piece of record evidence in making a decision. *See, e.g.*, ISCR Case No. 07-17673 at 2 (App. Bd. Apr. 2, 2009).

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