

KEYWORD: Guideline F

DIGEST: Applicant argues that her decision not to have a hearing appears to be the main reason she was denied a clearance. Considering the record in this case and the Judge's decision as a whole, Applicant has failed to establish error. Adverse decision affirmed.

CASENO: 08-11995.a1

DATE: 05/10/2010

DATE: May 10, 2010

_____)	
In Re:)	
)	
-----)	ISCR Case No. 08-11995
)	
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 August 11, 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 decision on the written record. On February 26, 2010, after considering the record, Administrative Judge Claude R. Heiny denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: 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 has numerous delinquent debts, for such things as medical bills, telephone services, student loans, etc. Applicant has experienced illness in the recent past and is divorced, circumstances which were beyond her control and which affected her financial situation. However, the Judge noted a paucity of record evidence addressing many of the questions arising from her case, for example corroboration for her claims that (1) certain debts were not legitimately hers and (2) she had paid certain debts. The Judge also noted that the record contained no evidence that Applicant had received counseling or that she had her debts under control. Accordingly, he concluded that Applicant had failed to mitigate the security concerns in her case.

Applicant asserts that she made the unfortunate choice of not requesting an in-person meeting (hearing), and that not doing so appears to be the main reason she was denied a clearance. The Judge did indicate in his decision that he was unable to evaluate Applicant’s demeanor and appearance, and was unable to form a positive determination as to her truthfulness. However, the Judge also stated that even if he found for her in these matters, there is no evidence of payment on delinquent debts. Giving due consideration to this last qualifying statement, the Board concludes that the Judge’s ultimate adverse security clearance decision was not based on any negative inferences drawn from the mere fact that Applicant elected to have her case considered on the written record. Considering the record and the Judge’s decision as a whole, the Board concludes that the Judge’s decision is sustainable based on objective evidence of Applicant’s delinquent debt history and her inability to make significant progress in resolving her financial difficulties. Applicant has not established error on the part of the Judge.

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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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