

KEYWORD: Guideline F

DIGEST: Each case must be decided on its own merits. This case is distinguishable from the cases cited by Applicant. Adverse decision affirmed.

CASENO: 09-00525.a1

DATE: 03/23/2010

DATE: March 23, 2010

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In Re:)	
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-----)	ISCR Case No. 09-00525
)	
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Samuel Bluck, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On June 3, 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 December 31, 2009, after the hearing, Administrative Judge Henry Lazzaro 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 record evidence favorable to Applicant; whether the Judge's whole-person analysis was erroneous; and whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a research analyst and writer for a Defense contractor. He enlisted in the Navy. He subsequently attended college on a ROTC scholarship and served in the Navy as a commissioned officer. He retired as an O-4, having been approved to leave the service about one year in advance of his actual retirement date.

Applicant's first marriage ended in divorce, and his ex-wife died in 2006. He remarried in 2007 and has a four-year-old stepson. After retiring from the military, Applicant experienced a period of underemployment, which affected his financial condition.

Applicant has significant delinquent debt for credit cards, medical treatment, and a repossessed recreational vehicle (RV). He had intended to live in the RV following his retirement. However, after he retired, he did not make enough money to make payments on the RV, and it was repossessed. At the close of the record he owed over \$27,000 for the vehicle. He also has at least four delinquent debts not listed in the SOR, the balance owed on them being approximately \$16,000. He has entered into repayment plans for these debts.

Applicant considered filing for bankruptcy protection, but an attorney advised him that he made too much money for Chapter 7, and he did not want to pursue Chapter 13. Applicant's net monthly salary is approximately \$4,000. He also receives a monthly payment of \$2,900 in military retirement. Although he has a positive cash flow each month, he cannot account for how the remainder of his income is spent. Applicant held a security clearance while on active duty, with no incident or concern. He enjoys an excellent reputation for the quality of his character.

In the Analysis portion of the decision, the Judge explicitly considered Applicant's honorable service in the Navy and his good security record. However, he concluded that Applicant's decision to retire from the military without first reducing his debt or obtaining adequate replacement income reflected poorly upon his judgment. "[C]onsidering the disregard he has demonstrated since retiring from the Navy for keeping his financial affairs in order and the continuing disregard he has shown for resolving the financial problems he is experiencing, I find the whole person analysis is insufficient to overcome the financial considerations concern that exists." Decision at 7.

In support of his appeal, Applicant has cited to other Appeal Board cases which he contends support his case for mitigation. We give due consideration to them. However, we conclude that they

are distinguishable from Applicant's. Unlike the prior cases, in this one the Judge reasonably explained his conclusion that Applicant's financial problems were caused by his own actions and that he had not demonstrated sufficient attention to resolving his problems. Moreover, each case "must be decided upon its own merits." Directive ¶ E2.2.3.

Applicant contends that the Judge did not consider all the record evidence. Applicant cites to evidence that he suffered financial loss when a mobile home he owned was destroyed. He also cites testimony that he experienced some financial pressure due to his having cared for his ex-wife during her final illness. However, 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). Applicant's argument is not sufficient to rebut this presumption, in view of the totality of the record evidence. We conclude that the Judge's whole-person analysis complies with the requirements of Directive ¶ E2.2.1, in that the Judge considered the totality of Applicant's circumstances 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, 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: Jean E. Smallin

Jean E. Smallin
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