

KEYWORD: Guideline F

DIGEST: Applicant failed to demonstrate a track record of responsible actions in regard to his debts. The Judge’s findings are based upon substantial record evidence. The Board lacks authority to hold oral argument. Adverse decision affirmed.

CASENO: 09-01321.a1

DATE: 02/17/2010

DATE: February 17, 2010

In Re:)	
)	
-----)	ISCR Case No. 09-01321
)	
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 15, 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 November 23, 2009, after the hearing, Administrative Judge David M. White 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 certain of the Judge's factual findings were supported by substantial record evidence; and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge found the following: Applicant has numerous delinquent debts, totaling \$79,513. After receiving interrogatories from DOHA, Applicant entered into a agreement with a credit counseling service, whereby Applicant would pay to the service \$2,569 a month. After 49 months his debts were to be paid off. He has not made payments, however, due in part to a recent tax assessment from the IRS and in part to his having to make child support payments. Applicant attributes his financial problems to a job loss in 2002, in which he was "forced to quit" a position due to a conflict of interest with another company for which he was also doing work. Additionally, it was hard for him to find work after the terrorist attacks of September 11, 2001. Applicant enjoys an excellent reputation for his good character.

In resolving the case adversely to Applicant, the Judge stated that Applicant had failed to demonstrate a track record of responsible actions in regard to his debts. "The record demonstrates his ongoing inability to address his delinquent debts. Applicant's ongoing insolvency generates continuing potential for pressure, coercion, or duress." Decision at 7.

Applicant challenges the Judge's statement that Applicant's having been forced to quit a job in 2002 caused his financial problems. However, the Judge's findings about the circumstances of Applicant's leaving his employment are based upon substantial record evidence. Furthermore, there is no basis to conclude that the Judge mis-weighed this evidence or otherwise attributed to it unwarranted significance.

Applicant requests oral argument before the Board. The Board's authority is derived from the Directive. The Directive does not authorize the Board to hold oral arguments.

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: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board