

KEYWORD: Guideline F

DIGEST: Although there is record evidence that Applicant had paid some debts listed in his credit report, the Judge's statement that Applicant had not paid even one of his debts is sustainable as it pertains to the debts cited in the SOR. Arguments that rely on events which have not yet occurred do not demonstrate error by the Judge. Adverse decision affirmed.

CASENO: 09-01368.a1

DATE: 04/23/2010

DATE: April 23, 2010

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| In Re: |) | |
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| ----- |) | ISCR Case No. 09-01368 |
| |) | |
| 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 12, 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 January 25, 2010, after the hearing, Administrative Judge Darlene D. Lokey Anderson 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 findings of fact 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 made the following pertinent findings of fact: Applicant’s SOR lists nine delinquent debts, each of which he admits. The debts are for medical treatment, student loans, a repossessed vehicle, etc. Applicant has experienced unemployment for various periods between 2005 and 2008. He has hired an attorney to file for Chapter 7 bankruptcy protection in his behalf.

The Judge considered the effect which Applicant’s unemployment had on his financial condition, and she also considered his intention to file for bankruptcy. However, she also noted that Applicant had been constantly employed since 2008 and yet had done little to resolve his debts. She concluded that, at the close of the record, Applicant had “not presented sufficient evidence to demonstrate a track record of financial responsibility or that he [had] resolved his financial indebtedness.” Decision at 5. Accordingly, she concluded that Applicant had failed to mitigate the security concerns arising from his delinquent debts.

Applicant challenges the factual sufficiency of the Judge’s statement that he had not satisfied “even one of his debts.” Decision at 6. This statement appears in her whole-person analysis. The record contains evidence that certain of the debts listed in Applicant’s credit report had been satisfied. However, Applicant’s admissions to the SOR and the record evidence, including evidence which he submitted himself, demonstrate that the debts alleged in the SOR were not satisfied as of the close of the record. We conclude that the Judge’s material findings of security concern are based upon substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.”) Applicant’s appeal arguments rely to a significant degree on the occurrence of events in the future. Such arguments do not demonstrate error by 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,’” both as to the mitigating conditions and the whole-person factors. *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