

KEYWORD: Guideline F

DIGEST: The judge plausibly explained why the mitigating evidence was not sufficient to overcome the government's security concerns. The document Applicant discusses reflects payment of a \$34 debt which is unlikely to have changed the outcome of the case. Adverse decision affirmed.

CASENO: 09-02960.a1

DATE: 07/30/2010

DATE: July 30, 2010

In Re:)	
)	
-----)	ISCR Case No. 09-02960
)	
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 September 9, 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 April 30, 2010, after the hearing, Administrative Judge Erin C. Hogan 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 and whether the Judge erred in her application of the Guideline F mitigating conditions. For reasons set forth below, we affirm the Judge’s decision.

The Judge made the following pertinent findings of fact: Applicant works for a Defense contractor. He has held a security clearance in the past, about 20 years ago, when working for another government agency. He has several delinquent debts, for such things as a repossessed automobile, medical expenses, and credit cards. His financial problems started during a period of unemployment in 2002. The problems were also affected by a divorce. Although his ex-wife was supposed to pay off some of the marital debts, she failed to do so, leaving Applicant to pay all the marital debts.

Applicant has, in fact, paid off some of his debts, including several not alleged in the SOR. Prior to the hearing, Applicant attended a financial counseling session and, after the hearing, hired a credit counselor.¹ Applicant enjoys a good reputation for the quality of his work performance and his character.

In the Analysis portion of the Decision, the Judge acknowledged that Applicant’s debts were affected by circumstances outside his control and that he had taken a positive step by obtaining the services of a debt counselor. However, she also concluded that he had not been responsible in regard to his delinquent debts, noting that many of them were for amounts under \$200. The Judge stated that this suggests “a pattern of financial neglect as opposed to being unable to pay.” Decision at 6.

Applicant contends that the Judge either failed to consider, or mis-weighed, evidence favorable to him, such as his efforts to pay off his debts and financial sacrifices he has made in order to resolve his difficulties. He also cites to evidence that he had paid off one of the debts which the Judge found against him, asserting that he had faxed the evidence to the Judge but that she did not appear to have considered it.

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). The Judge discussed Applicant’s unemployment, his divorce, his efforts to pay his debts, and his having enlisted the services of a financial counselor. However, she plausibly explained why this evidence was not sufficient to overcome the Government’s Guideline F security concerns, noting Applicant’s own admission that he has not been

¹The Judge held the record open after the hearing for the Applicant to submit additional evidence.

knowledgeable about managing credit. Concerning the document that Applicant averred he had faxed to the Judge, it reflects payment of a \$34.00 debt. Given that relatively small amount, the resolution of that debt is unlikely to have changed the outcome of the case. Therefore, any error associated with this document would be harmless. On the whole, Applicant's presentation on appeal is not sufficient to rebut the presumption that the Judge considered the entire record. Neither is it sufficient to demonstrate that she weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See* ISCR Case No. 06-21819 at 2 (App. Bd. Aug. 13, 2009).

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: 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