

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge’s challenged finding regarding Applicant’s dismissed bankruptcy is consistent with the record evidence and sustainable. Adverse decision affirmed.

CASENO: 09-03621.a1

DATE: 12/03/2010

DATE: December 3, 2010

In Re:)	
)	
-----)	ISCR Case No. 09-03621
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

D. Michael Lyles, Esq., Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On November 19, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as

amended) (Directive). Applicant requested a hearing. On August 31, 2010, after the hearing, Administrative Judge Paul J. Mason 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; whether the Judge failed to consider all of the record evidence or mis-weighed the evidence; and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Consistent with the following discussion, we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant has numerous delinquent debts for such things as credit cards, loans, and consumer goods. Many of the debts originated from his time in the U. S. Navy, from which he was discharged in 2003. Applicant filed for Chapter 13 bankruptcy in 2008, although the petition was subsequently dismissed. Applicant has a net monthly income of approximately \$6,200, with \$3,000 left over after expenses. Although Applicant had paid off some of the debts alleged in the SOR, he still owed over \$70,000. The Judge concluded that Applicant had failed to demonstrate mitigation, in light of his dismissed bankruptcy petition and failure to pay off his debts, despite significant discretionary income.

Applicant contends that the Judge erred in some of his findings. In particular, he claims that the Judge erred in stating that the bankruptcy petition was dismissed due to failure to make payments. Rather, he states that the evidence shows that the petition was dismissed because Applicant had an incompetent attorney. Applicant also contends that the Judge's findings about particular debts contain errors. However, the Judge's statement about the bankruptcy, found in the Analysis portion of his decision, is consistent with the record evidence. While the Judge considered Applicant's testimony that his attorney was ineffective, the challenged statement is sustainable.¹ The Judge's material findings, considered as a whole, are supported by the record and are sustainable. *See, e.g.*, ISCR Case No. 08-11735 at 3 (App. Bd. Sep. 21, 2010).

Concerning Applicant's contention that the Judge ignored or mis-weighed the record evidence, a Judge is presumed to have considered all the evidence in the record. *See, e.g.*, ISCR Case No. 09-01735 at 2 (App. Bd. Aug. 31, 2010). Applicant's apparent disagreement with the Judge's weighing of the evidence is not sufficient to rebut the presumption that the Judge considered all of the evidence in making his decision. Neither is Applicant's argument sufficient to demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 09-01970 at 3 (App. Bd. Oct. 29, 2010).

¹*See* Tr. at 22: "Q: The reason people fail in [Chapter 13 bankruptcy] . . . the monthly payment is too much. When it gets to be too much they can't pay it. The court gets notified and the plan gets dismissed. Is that what happened? A: In the end, yes, sir." *See also* the Summary of Applicant's Clearance Interview, contained in Government Exhibit 2, Interrogatories: "In 3/09 he received notice from the court that the case was being dismissed. He is unclear as to the reason but thought it had something to do with his 2007 income tax return or pay stubs which had been submitted." The Judge noted this evidence in his decision. Decision at 3-4.

The record supports a conclusion 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). Applicant contends that we should remand the case to the Judge to reopen the record and take in additional evidence. However, in light of our holding, we need not address this request.

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: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

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