

KEYWORD: Guideline F

DIGEST: Applicant was not denied due process. The Judge’s findings of fact were based upon substantial record evidence. Adverse decision affirmed.

CASE NO: 09-05176.a1

DATE: 12/14/2010

DATE: December 14, 2010

In Re:)	
)	
-----)	ISCR Case No. 09-05176
)	
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 March 24, 2010, 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 September 30, 2010, after the hearing, Administrative Judge Arthur E. Marshall, Jr., 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 she was denied due process; whether the Judge’s findings of fact were supported by substantial record evidence; and whether the Judge erred in his application of the mitigating conditions. Consistent with the following discussion,

we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant is a senior contract specialist working for a Defense contractor. She previously held a security clearance in the 1990s while working for a prior employer. In 2007 she took a job requiring a security clearance and submitted a security clearance application (SCA) in August of that year. “When she started her present job, she was unaware that her 2007 [SCA] had not been approved.” Decision at 2.

Applicant has numerous delinquent debts, for such things as a judgment against her following her eviction from an apartment, medical expenses, a student loan, a repossessed vehicle, etc. These delinquencies originated during a period of unemployment in the early 2000s. Applicant was employed, although with frequent job changes, in the years since. For purposes of this appeal, it is pertinent to note the Judge’s finding that, in January 2008, Applicant was dismissed from the job she had taken in 2007 and for which she had submitted a SCA.

In the Analysis portion of the decision, the Judge acknowledged that Applicant’s unemployment had been a circumstance beyond her control. However, he went on to state that Applicant had provided little evidence of efforts to resolve her bad debts or of other kinds of mitigation, such as the receipt of financial counseling, etc. The Judge concluded that Applicant had failed to meet her burden of persuasion as to mitigation.

Applicant contends that she was denied due process. She states that, until she read the Judge’s sentence quoted above, she was not aware that her 2007 SCA had been disapproved. She contends that, had she known about the prior disapproval, she would have presented her case differently at the hearing.

We have considered this issue in light of the record as a whole. The Judge’s statement appears to refer to Applicant’s own testimony concerning the circumstances of her SCA: “[The 2007 SCA] was my first re-application . . . Q: So when you started at [current employer] . . . A: I didn’t even realize the clearance had not been approved.” Tr. at 27. There is nothing in the record to indicate that her 2007 SCA had been adjudicated and denied.¹ Moreover, there is nothing in the record to suggest that Applicant was denied adequate notice of the security concerns alleged against her or access to the evidence which the Government used in presenting its case at the hearing. Neither is there any basis to conclude that Applicant was denied other due process rights afforded by the Directive.

Concerning her claim that the Judge made factual errors, the record demonstrates that the Judge’s material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Applicant has not identified any harmful error likely to change the outcome of the case. Considering the record evidence as a whole, the Judge’s material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 08-11735 at 3 (App. Bd. Sep. 21, 2010). Furthermore, we have considered the Judge’s treatment

¹While it is possible that, when Applicant lost her job in January 2008, processing of her SCA halted, there is no record evidence from which to draw a conclusion.

of the pertinent mitigating conditions and conclude that it is sustainable.

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.’” *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