

KEYWORD: Guideline F

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the record evidence. Applicant did not demonstrate that the Judge mis-weighed the evidence. Adverse decision affirmed.

CASE NO: 09-05556.a1

DATE: 06/23/2011

DATE: June 23, 2011

In Re:)	
)	
-----)	ISCR Case No. 09-05556
)	
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 October 29, 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 decision on the written record. On March 9, 2011, after considering the record, Administrative Judge Joan Caton Anthony 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 all of the record evidence and whether the Judge erred in her application of the mitigating conditions.

Consistent with the following, we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant is a program manager for a Government contractor. Divorced, he is the father of three adult sons. He first received a security clearance in 1980.

In 2000, Applicant and his wife were laid off from their jobs. They fell behind on their mortgage payments and utility bills. They filed for Chapter 13 bankruptcy protection in 2002, but this action was dismissed in 2004. The couple filed again for Chapter 13 bankruptcy later in 2004. In March 2009, the trustee in bankruptcy filed a certificate of default, stating that Applicant was over \$17,000 in arrears in monthly payments. The bankruptcy action was dismissed in June 2009.

Applicant has thirteen delinquent debts listed in the SOR, and he has admitted all of them in his Reply to the SOR. These delinquent debts total \$108,835.¹ In his Response to the File of Relevant Material (FORM) he promised to “persevere and resolve his financial delinquencies at some unspecified time in the future.” Decision at 3.

Applicant attributed his financial problems to unemployment, medical expenses, divorce, college expenses, his mother’s medical problems, and repairs to his house. “He failed to specify how these events impacted his ability to satisfy his financial obligations.” Decision at 3. He also failed to provide documentary evidence that he had paid or settled any of the SOR debts or that he had established payment plans for them.

In the Analysis portion of the Decision, the Judge noted that a number of Applicant’s delinquent debts were for amounts less than \$250. Applicant stated to an OPM interviewer in 2009 that he intended to pay his delinquent debts, but the debts remain unresolved nearly two years later. The Judge stated that Applicant had failed to demonstrate that his problems are resolved or otherwise under control. She also stated that he did not demonstrate a strategy for debt resolution.

Applicant contends that the Judge ignored, or did not properly weigh, record evidence favorable to him. He states that he had devoted most of his efforts to resolving his mortgage problems and, as a consequence, had not devoted much attention to his smaller debts. He believes that this effort to address his larger debt demonstrates his serious intent to resolve his financial problems.² However, as the Judge noted in her Analysis, several of Applicant’s debts were for amounts under \$100. He had failed to resolve them, despite having the apparent ability to have done so.³ Her conclusion that Applicant had failed to demonstrate mitigation is sustainable on this record.

¹This total amount of debt is found in the Analysis rather than the Findings section. Decision at 5.

²See Item 3, Reply to SOR, at 5: “[M]y inability to pay off the relatively small remaining bills is due to my focus on resolving this mortgage issue once and for all . . .”

³See Decision at 7: Applicant “has been steadily employed at his present position since about April 2009. In a May 2009 interview with an OPM investigator, he stated he would take action to pay or otherwise satisfy his delinquent debts. However, his 13 delinquent debts remain unaddressed. Despite nearly two years of steady employment, Applicant has failed to satisfy his delinquent debts, several of which are for relatively small amounts of money.”

Applicant's brief is not sufficient to rebut the presumption that the Judge considered all of the evidence in formulating her decision. Neither has he demonstrated that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 09-01735 at 2 (App. Bd. Aug. 31, 2010).

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). *See also* Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Jean E. Smallin
Jean E. Smallin
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