

KEYWORD: Guideline F

DIGEST: Applicant argues that she did not anticipate that Department Counsel would be against her at the hearing. Applicant received written guidance advising her that the hearing is an adversarial proceeding in which the parties have the responsibility to present their respective cases and that the Government is represented by an attorney known as Department Counsel. Applicant was represented by a personal representative at the hearing. Adverse decision affirmed.

CASENO: 09-05830.a1

DATE: 06/25/2010

DATE: June 25, 2010

_____)	
In Re:)	
)	
-----)	ISCR Case No. 09-05830
)	
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 November 6, 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 March 31, 2010, after the hearing, Administrative Judge Carol G. Ricciardello 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 did not consider all the record evidence; whether Applicant was denied due process; and whether the Judge erred in her application of the pertinent mitigating conditions. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a contract specialist working for a federal contractor. She has earned some college credits. She is unmarried and has no children.

Applicant has numerous delinquent debts, for such things as rent, an automobile loan, medical expenses, a student loan, etc. The medical bills were for treatment she had received believing that she was covered by her father’s insurance. The automobile loan was a debt in Applicant’s name alone, although when she purchased the car she was under the impression that her father and uncle were going to assist her in making payments. Additionally, Applicant signed a lease for the purpose of providing a friend a place to live while the friend was undergoing personal hardships. However, the friend skipped out on the lease, leaving Applicant liable. Applicant has not sought financial counseling.

Applicant contends that the Judge did not consider evidence that Applicant had engaged in repayment of some of her debts. However, a Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 08-06873 at 2 (App. Bd. Dec. 18, 2009). In the case under consideration here, the Judge acknowledged that Applicant had made some effort at repayment. However, the Judge also explained why she concluded that Applicant had not acted responsibly to her debt situation viewed as a whole. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. Neither has Applicant demonstrated that the Judge mis-weighed the record evidence. *See, e.g.*, ISCR Case No. 06-21819 at 2 (App. Bd. Aug. 13, 2009).

Applicant’s brief discusses the role of the Department Counsel prior to the hearing with the comment “I did not realize she was going to be against me rather than a source that could help me properly prepare for a winning decision on my case.” The Board construes Applicant’s argument as a claim of denial of due process. Applicant received written guidance for her hearing, which reads, in pertinent part:

The hearing is an adversarial proceeding in which the parties have the responsibility to present their respective cases. The Government is normally represented by an attorney known as a Department Counsel. The Applicant has the option of appearing by himself or herself without an attorney, or being represented by an attorney selected

and paid for by the Applicant, or by being represented by a Personal Representative such as a friend, family member, or union representative. Prehearing Guidance at 1.

The Board notes that Applicant was represented by a personal representative at the hearing. The record does not reasonably support a claim of denial of due process.

Concerning mitigation, the Judge concluded that circumstances outside Applicant's control had affected her financial problems. However, as stated above, the Judge noted evidence which tended to show that Applicant had not acted responsibly. For example, the Judge cited record evidence that Applicant agreed to undertake financial responsibilities beyond her means, such as the lease on behalf of her friend, which undermines Applicant's claim to have established a track record of financial responsibility. We find no reason to conclude that the Judge's application of the mitigating conditions was in error.

After reviewing the record, we conclude 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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody

Administrative Judge
Member, Appeal Board