

KEYWORD: Guideline F

DIGEST: Applicant has not rebutted the presumption that the Judge considered all the record evidence. Adverse decision affirmed.

CASENO: 09-06091.a1

DATE: 04/14/2011

DATE: April 14, 2011

In Re:)	
)	
-----)	ISCR Case No. 09-06091
)	
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 January 12, 2011, after the hearing, Administrative Judge Marc E. Curry 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 or mis-weighed record evidence and whether the Judge's decision was 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 a degree in mechanical engineering and works for a Defense contractor. Married with four children, she is pursuing a master's degree in engineering.

In the early 1990s, Applicant and her husband owned rental properties. These properties were a source of difficulty, due to frequent vacancies, evictions, and repairs. Applicant also experienced medical problems that rendered her unable to work. In 1995, she and her husband filed for Chapter 7 bankruptcy protection and subsequently discharged \$42,000 worth of debt.

In 2004, Applicant and her husband sold their house and purchased another one, putting down \$30,000 and financing the rest. Later, they invested \$10,000 in a trucking business. The business had difficulties, and the two had to finance it with credit cards. They refinanced the house and invested \$50,000 of the equity in the business. They also took out a second mortgage on their house. The combined monthly mortgage payments were \$7,300.

The trucking business always experienced financial problems, its operating expenses exceeding its revenue. Although Applicant's husband ended the business and started working for another company with no lapse in income, the couple still had to rely on credit cards to pay ordinary living expenses.

Applicant attempted to persuade the holder of their home mortgage to modify the loan. However, this request was rejected. Applicant has not made mortgage payments on either the first or second mortgages on the house since 2007. At some point, the mortgage was assigned to another bank. In 2009, the new mortgagee initiated foreclosure proceedings. However, a judge ruled that the mortgagee lacked standing to foreclose because it did not hold the note at the time the action commenced. Ownership of the mortgage was still in litigation by the close of the record.

In 2007, Applicant began paying off outstanding credit card debt, although she did not corroborate her claim that she had discharged \$75,000 of non-SOR debt. After paying off her credit card debts, she began setting aside money in her 401k plan. She did not corroborate her claim that the amount she was placing in the 401k was equal to the amount she would otherwise have spent on her mortgage payments.

In the Analysis portion of the decision, the Judge acknowledged that Applicant's financial

problems were affected by circumstances outside her control. However, he noted that her testimony that she would be able to satisfy her mortgage debts once the litigation is resolved was not corroborated and is merely speculative. He concluded, therefore, that she had not met her burden of persuasion.

Applicant contends that the Judge did not consider record evidence corroborating her testimony that she is depositing into her 401k plan an amount equal to her mortgage payments. She points to a document that she discussed in her hearing testimony. Tr. at 54-55. This document, Applicant Exhibit F, includes two pay statements from her current employer. One of the statements, for a pay period ending August 31, 2007, shows year-to-date 401k contributions of \$2001. 69. This is well below the \$7,300 which Applicant owes *monthly* for her mortgage payments. Applicant has pointed to no evidence supporting her claim. She also argues that the Judge did not properly weigh the evidence regarding the nature of the foreclosure proceeding. She states that she is not refraining from making mortgage payments for an improper reason. Rather, she is not doing so because it is not clear who the actual mortgagee is. However, the Judge stated explicitly in his Analysis that Applicant was proceeding in good faith in the litigation. Applicant has not rebutted the presumption that the Judge considered all of the evidence. Neither has she demonstrated that the Judge misweighed the record evidence. *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: 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