

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant did not reply to the File of Relevant Material. Applicant has not provided a reason to disturb the Judge’s credibility determination. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. Adverse decision affirmed.

CASE NO: 09-07012.a1

DATE: 04/04/2011

DATE: April 4, 2011

In Re:)	
)	
-----)	ISCR Case No. 09-07012
)	
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 August 17, 2010, 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 decision on the written record. On February 8, 2011, after considering the record, Administrative Judge Noreen A. Lynch 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 or mis-weighed the evidence; whether the Judge’s application of the pertinent

mitigating conditions was erroneous; and whether the Judge's whole-person analysis was erroneous. Consistent with the following discussion, we affirm the decision of the Judge.

The Judge found that Applicant is an employee of a Defense contractor. She has an undergraduate college degree. She has served in the U.S. Navy Reserve since 2001 and has held a security clearance since 2003.

Applicant was discharged twice in Chapter 7 bankruptcy, in 1992 and again in 1998. She has delinquent debts for vehicle repossessions and for a credit card. She did not corroborate her claims that certain of her alleged debts were repeats of others. She has blamed her financial problems on the seasonal nature of her husband's employment and on the general economic climate. Applicant did not submit evidence of regular payment plans or receipts for payment except for one debt. Her monthly income in 2010 was \$3,313, with a net remainder after expenses of \$850.

In the Analysis portion of the her decision, the Judge states that Applicant did not fully explain how her husband's employment circumstances impacted the family finances. Neither did Applicant provide evidence of debt payment or repayment plans. Applicant failed to provide evidence of financial counseling. Given this paucity of record evidence, the Judge concluded that Applicant had failed to meet her burden of persuasion as to mitigation. Decision at 7.

Applicant contends that the Judge did not properly weigh, or failed to consider, the information she provided in her response to the SOR and in her reply to DOHA interrogatories regarding the duplicative nature of some of her debts as well as her efforts to repay them. In doing so, she appears to challenge the Judge's credibility determination. However, Applicant chose to have the case decided on the written record, with the result that her credibility could not be evaluated in the context of a hearing. Moreover, she did not reply to the Government's File of Relevant Material. *See* ISCR Case No. 07-14151 at 3 (App. Bd. Sep. 10, 2008). Applicant's appeal does not provide a reason to disturb the Judge's credibility determination.

Furthermore, the Judge acknowledged Applicant's statements to the effect that some of the SOR debts were repeats of others. However, the Judge's comment that Applicant had "not provided documentation to support the claim" is consistent with the record that was before her. Decision at 3. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. *See* ISCR Case No. 09-03760 at 3 (App. Bd. Sep. 21, 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,'" 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).

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