

KEYWORD: Guideline F; Guideline J

DIGEST: DOHA Judge do not have authority to give an Applicant more time to pay her debts.
Adverse decision affirmed.

CASENO: 09-07754.a1

DATE: 01/26/2011

DATE: January 26, 2011

In Re:)
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)
 -----) ISCR Case No. 09-07754
)
)
 Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Marc G. Laverdiere, Esq., Department Counsel

FOR APPLICANT

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 27, 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 J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 19, 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 considered all the record evidence; and whether Applicant was treated fairly. Consistent with the following discussion, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant is 34 years old and separated from her husband. She has a 15-year-old daughter.

Applicant was involved in altercations in 2005 and 2008. The 2008 incident led to charges. Applicant pled guilty to one misdemeanor count of reckless endangerment. She was sentenced to five days in jail, a small fine and three years unsupervised probation. She will be on probation until May 2012.

Applicant had six delinquent debts. She has resolved three of them. The three outstanding delinquent debts involve credit cards and total over \$18,000.

Applicant's appeal brief cites to evidence that was not before the Judge. The Board cannot consider new evidence on appeal. *See* Directive ¶ E3.1.29.

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 her decision, the Judge discussed Applicant's efforts at repayment and found in her favor on three debts. However, the Judge also explained why she concluded that Applicant had not acted responsibly as to her debt situation viewed as a whole. Applicant also challenges the Judge's findings of fact on the criminal allegations. The Judge found for Applicant on the 2005 allegation. Although the Judge's remaining findings contain harmless error, 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). We find no reason to conclude that the Judge's application of the mitigating conditions or whole person factors was in error.

Applicant's brief asserts that she followed the Judge's instructions and yet she was still denied a clearance. The Board construes this as an assertion that she was treated unfairly. The Judge left the record open for Applicant to submit additional documentation. In this context there was explicit reference to specific debts. The Judge found for Applicant on those debts. The Board finds no basis to conclude that Applicant was treated unfairly or denied due process.

Applicant argues that the Judge should have given her more time to pay her debts. The Board has previously noted that DOHA Judges lack that authority. *Compare* ISCR Case No. 08-04492 at 3 (App. Bd. May 20, 2010).

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: Michael D. Hipple

Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board