

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge's challenged findings are based on substantial record evidence and are sustainable. Adverse decision affirmed.

CASENO: 09-08142.a1

DATE: 08/19/2010

DATE: August 19, 2010

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In Re: )	
)	
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)	
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 February 1, 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 hearing. On May 13, 2010, after the hearing, 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 certain of the Judge's findings of fact were supported by substantial record evidence; whether the Judge erred in her credibility determination; and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.<sup>1</sup> Consistent with the following discussion, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant is a mail room supervisor for a Government contractor. Another Government contractor has offered him a job at a higher salary. This job requires a security clearance. Widowed, he is the father of an adult daughter.

In 2004, Applicant was injured while at work. In 2008, the Workers' Compensation Commission awarded him \$5,700 as well as payment of his medical expenses for the treatment of his injury.

In 2005, Applicant was seriously injured when a truck collided with his car. He was unable to work for nearly a year. He has filed a lawsuit against the driver of the truck and hopes to collect \$250,000 in damages. He has other medical issues, such as diabetes, high blood pressure, and sleep apnea. He had surgery in September 2006 to correct a problem with nasal blockage.

Applicant has experienced unemployment in the past. He was fired from a job in 2003 and then lost a follow-on job after his automobile accident. He worked at another job from May 2006 until June 2008, at which point he was fired. He was unemployed until March 2009, when he began his current employment.

Applicant has numerous delinquent debts, for such things as unsatisfied judgements against him, cell phone services, medical expenses, unpaid rent, an automobile loan, etc. Applicant spends more each month than he makes in salary. He was delinquent in paying his federal income tax in 2008. This debt has been satisfied through garnishment of his 2009 refund.

Applicant enjoys a good reputation for his professionalism.

In the Analysis portion of the Decision, the Judge noted Applicant's medical problems, which were circumstances beyond his control.<sup>2</sup> However, she also concluded that Applicant had not demonstrated a reasonable plan to pay off his debts and that he has elected not to pay his creditors, even for small debts, until resolution of the litigation resulting from his automobile accident.

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<sup>1</sup>The Guideline E allegations were withdrawn by the Government at the beginning of the hearing. Tr. at 8-9.

<sup>2</sup>See Directive, Enclosure 2 ¶ 20(b): "the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances[.]"

While Applicant has admitted his financial delinquencies, it was not clear that he understood his financial problems or how to resolve them. Aside from prevailing in the lawsuit, he has no plan in place to systematically resolve his substantial delinquent debt and prepare for future contingencies. Decision at 8.

Applicant contends that the Judge erred in some of her findings of fact, for example her finding that he spends more each month than he makes in salary and that Workers' Compensation paid for all of his medical treatment. On this latter point, he argues that he has medical expenses not covered by Workers' Compensation. We have examined Applicant's arguments in light of the record. The Judge's finding about Applicant's expenditures is based upon Applicant Exhibit (AE) G, his monthly budget. Based upon the figures represented in this document, the Judge's finding is sustainable. Her finding about Applicant's medical bills is limited to those resulting from his on-the-job back injury. AE A, Letter from Attorney, and Applicant's own testimony at Tr. 27-28 support her finding that Workers' Compensation paid these bills. After reviewing the record, we conclude that the Judge's material findings of security concern are based upon substantial record evidence and are sustainable. *See* Directive ¶ E3.1.32.1. (Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record."). *See also* ISCR Case No. 08-07528 at 2 (App. Bd. Dec. 29, 2009).

Applicant contends that his having admitted most of his debts and having provided information concerning them that would otherwise not have been discovered demonstrates his credibility. However, the record viewed as a whole provides no reason to believe that the Judge erred in evaluating Applicant's credibility. Her material findings of security concern are based upon substantial record evidence and her ultimate conclusions constitute reasonable interpretations of the evidence. Indeed, Applicant admitted the legitimacy of most of the alleged debts and presented no reasonable plan for resolving them, beyond his hope for a substantial award of damages in his lawsuit.<sup>3</sup> We find no basis to disturb the Judge's evaluation of Applicant's credibility. *See* Directive ¶ E3.1.32.1.

After reviewing the record, the Board concludes 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

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<sup>3</sup>The Judge held the record open after the hearing in order to give Applicant an opportunity to present additional evidence of his efforts to contact his creditors, explain his circumstances, and advise them of his plans for repayment. Applicant submitted nine documents. Of these, only two concerned Applicant's contacts with creditors. One was a letter by a lawyer, dated after the hearing, stating that he had contacted Applicant's creditors and told them that they would be paid out of the damage award from the ongoing lawsuit. AE H, Letter from Lawyer, dated Apr. 16, 2010. The exhibit does not state when the lawyer contacted Applicant's creditors. The other, AE L, is a letter from a physician, dated April 23, 2006, and addressed to Applicant's landlord. This letter requests the landlord to permit Applicant to remain on the rented premises one month beyond the termination of the lease in order to facilitate recuperation from surgery.

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: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board