

KEYWORD: Guideline F

DIGEST: Applicant was advised of right reply to the FORM and to be represented by counsel. We do not conclude he was denied the due process afforded him by the Directive. Adverse decision affirmed.

CASENO: 10-00141.a1

DATE: 04/28/2011

DATE: April 28, 2011

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| In Re:) | |
|) | |
| -----) | ISCR Case No. 10-00141 |
|) | |
| 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 25, 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 decision on the written record. On December 30, 2010, after considering the record, Administrative Judge Edward W. Loughran 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 Applicant was denied due process; whether the Judge erred in his application of the pertinent mitigating conditions; and whether the Judge’s whole-person analysis was erroneous. Consistent with the following discussion, we affirm the decision of the Judge.

Applicant is an employee of a Defense contractor. He has attended college but did not take a degree. He is divorced and has no children.

Applicant has numerous delinquent debts, the SOR alleging around \$32,000. The debts were for medical expenses, credit card expenses, etc. He was sued by a credit card company. He and the creditor settled the lawsuit, Applicant agreeing to make monthly payments. There is no evidence of payments after March 2010.

In 2007, Applicant had gastric bypass surgery. The \$22,000 cost of the surgery was not covered by insurance. He was on disability for several months following the surgery, and his income was reduced. He had high balances on a number of his accounts, but they became delinquent after the surgery.

Applicant has paid most of the bills from the surgery, though several remain. He has also paid or settled several non-SOR debts.

In the Analysis portion of the decision, the Judge concluded that Applicant’s gastric bypass surgery was an effort to correct a life-threatening condition, and, therefore, the expenses associated with that operation resulted from circumstances outside Applicant’s control. However, he also noted that Applicant had not submitted proof of payment for any SOR debt save one. He concluded that Applicant had not demonstrated that his financial problems were sufficiently in order to alleviate the security concerns which arose from those problems. The Judge also noted that, although Applicant’s accounts were not delinquent before the surgery, they already had high balances.

Applicant challenges the Judge’s application of the mitigating conditions. However, examining the Judge’s analysis of Applicant’s case in light of the record evidence, we find no reason to conclude that the Judge erred. The Judge’s conclusion that Applicant had not met his burden of persuasion as to mitigation is sustainable. Moreover, the Judge’s whole person analysis complies with the requirements of Directive, Enclosure 2 ¶ 2 (a), in that he considered the totality of Applicant’s conduct in reaching his decision. *See, e.g.*, ISCR Case No. 08-02299 at 7 (App. Bd. Nov. 12, 2010).

Applicant did not reply to the File of Relevant Material (FORM), thereby failing to take advantage of an opportunity to present evidence beyond that already contained in his reply to the SOR and his answers to interrogatories. Applicant contends that he “was counseled not to appear or submit a formal response.” He does not state by whom. We construe Applicant’s statement as raising a due process issue. The FORM, dated October 26, 2010, placed him on notice of his right to respond with documents setting forth “objections, rebuttal, extenuation, mitigation, or explanation, as appropriate.” In addition, DOHA sent Applicant a memo on October 27, 2010, advising him of his right to reply to the FORM as well as his right to be represented by counsel. The memo was accompanied by a copy of the Directive. Accordingly, we conclude that Applicant was on notice of his rights. We find no reason to conclude that Applicant was denied the due process afforded him by the Directive. *See* ISCR Case No. 08-11034 at 3 (App. Bd. Aug. 11. 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: 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