

KEYWORD: Guideline H; Guideline E: Guideline F

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

CASENO: 10-00898.a1

DATE: 03/25/2011

DATE: March 25, 2011

In Re:)
)
)
 -----) ISCR Case No. 10-00898
)
)
 Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On June 4, 2010, DOHA issued a statement of reasons (SOR) advising Applicant of the

basis for that decision—security concerns raised under Guideline H (Drug Involvement), Guideline E (Personal Conduct), and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 30, 2010, after the hearing, 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 did not properly analyze 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.

The Judge made the following pertinent findings of fact: Applicant is an employee of a Defense contractor. He served in the U.S. Navy from 1989 until 2001. He served in the Naval Reserves in 2002. He is married and has two children. He has held a security clearance since 1990.

Applicant used marijuana in high school during his senior year. He also purchased and used it on an intermittent basis from 2002 until 2007. He used Ecstasy and Mushrooms a “few times” after leaving the Navy.

In November 21, 2002, Applicant was arrested and charged with possession of marijuana. He failed to appear in court.

In completing security clearance applications (SCA) in 2003 and 2007, Applicant provided false answers concerning his drug use and his drug-related arrest.

Applicant has numerous delinquent debts, totaling \$16,000. Some of the debts are for tuition bills that he could not pay while attending technical school. He has paid some debts not listed in the SOR. In 2007, he had a wage garnishment for his 2003 state and federal taxes. He has not paid any other debts in the SOR.

Applicant is searching for debt consolidation plans and has sent letters to several of his creditors to inquire about the status of the debts. He has received no credit counseling. He enjoys a good reputation for being hard working and reliable.

Applicant contends that the Judge either did not consider all of the record evidence or mis-weighed the evidence. However, a Judge is presumed to have considered all the evidence in the record. *See, e.g.*, ISCR Case No. 09-01735 at 2 (App. Bd. Aug. 31, 2010). Applicant has not rebutted the presumption that the Judge considered all of the record evidence. Neither has he demonstrated that the Judge mis-weighed the evidence.

Applicant contends that the Judge failed to apply the mitigating conditions which are pertinent to his case. However, Applicant’s argument is premised on the assumption that the Judge erred in her consideration or weighing of the record evidence. The underlying assumption is invalid and, thus, Applicant’s argument fails.

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: 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