

KEYWORD: Guideline F

DIGEST: The Board cannot consider new evidence on appeal. The adverse impact of unfavorable security clearance decision is not a relevant consideration in evaluating security clearance eligibility. Adverse decision affirmed.

CASENO: 10-01188.a1

DATE: 06/15/2011

DATE: June 15, 2011

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In Re:)
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Applicant for Security Clearance)
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ISCR Case No. 10-01188

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 September 14, 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 April 5, 2011, after considering the record, Administrative Judge Wilford H. Ross denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the decision.

The Judge made the following pertinent findings of fact: Applicant is a 46-year-old employee of a Defense contractor seeking a clearance in connection with her job.

In the past, Applicant experienced a job layoff followed by two years of unemployment. The Judge found that she has over \$31,000 in delinquent debt, for such things as medical bills, a line of credit from a bank, tuition, etc. The debt for the line of credit is in the amount of \$26,152. Applicant “states that this debt has been ‘charged off’ and, therefore, forgiven.” Decision at 2. The Judge stated that Applicant “submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.” Decision at 4.

In the Analysis portion of the Decision, the Judge noted that Applicant’s period of unemployment was “the primary cause of her financial problems.” Decision at 7. He stated that the record did not contain sufficient evidence of Applicant’s efforts at repayment or otherwise to demonstrate resolution of her debts. He characterized Applicant’s belief in the equivalence of debt charge off and debt forgiveness as “disturbing,” in light of record evidence that she had worked “in the financial sector.”¹ Decision at 6. He concluded that Applicant had failed to meet her burden of persuasion as to mitigation.

Applicant has submitted new evidence in support of her appeal, for example satisfaction of two of the five debts the Judge found against her, occurring after the close of the record. She also has included information to the effect that she will be laid off again should her clearance be denied. We cannot consider this new evidence on appeal. *See* Directive ¶ E3.1.29. (“No new evidence shall be received or considered by the Appeal Board”). In any event, the adverse impact that an unfavorable decision may have on an applicant is not a relevant or material consideration in evaluating his or her security clearance eligibility. *See, e.g.*, ISCR Case No. 08-07528 at 2 (App. Bd. Dec. 29, 2009).

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

¹Item 6, Answers to Interrogatories, at 7 states that Applicant had previously been employed by a bank. It was from this job that she was laid off.

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: 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