

KEYWORD: Guideline F

DIGEST: Applicant failed to overcome security concerns arising from her six bankruptcy filings. Adverse decision affirmed.

CASE NO: 10-01517.a1

DATE: 06/04/2012

DATE: June 4, 2012

In Re:)	
)	
-----)	ISCR Case No. 10-01517
)	
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 11, 2011, 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 9, 2012, after considering the record, Administrative Judge Martin H. Mogul 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 Judge's decision.

The Judge found that Applicant had filed for bankruptcy six times between 1996 and 2009, five under Chapter 13 and one under Chapter 7. The Chapter 7 and one of the Chapter 13 petitions resulted in discharge of Applicant's debts. Applicant has struggled financially over the years, due to her inability to find jobs that paid enough. She also has experienced unemployment, from July 2005 to January 2006. Her current financial condition is still weak, and, after all expenses are paid, she has a monthly shortfall of \$27.00. She owes at least two debts that she has not been paying.

In the Analysis, the Judge noted Applicant's employment difficulties, which he characterized as circumstances outside her control that affected her financial problems.¹ He also stated that her bankruptcy discharges had provided some measure of debt resolution. However, he also stated that the record contained no evidence to demonstrate that Applicant's financial situation as a whole had improved to the point that it mitigated the security concerns arising from her multiple bankruptcy filings. He cited to evidence that Applicant still has to borrow money to pay her expenses and that she has two debts that remain unsatisfied.

In the whole-person analysis, the Judge noted that he had not had an opportunity to assess Applicant's credibility in person.² He concluded that, based on the record that was before him, Applicant had failed to mitigate the security concerns in her case.

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. *See, e.g.*, ISCR Case No. 02-21045 at 4 (App. Bd. Dec. 28, 2004) (Record evidence of recurring financial difficulties despite repeated bankruptcy filings supported the Judge's adverse decision). "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."

¹Directive, Enclosure 2 ¶ 20(b): "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances."

²Elsewhere in the Decision, the Judge noted that Applicant had not provided a response to the File of Relevant Material, despite being provided with an opportunity to do so. Decision at 1.

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