

KEYWORD: Guideline F

DIGEST: Applicant alleges he was denied due process because he was unable to present a witness. The witness was unable to get onto the base where th hearing was held. The Judge permitted Applicant to submit a letter from the witness instead. Adverse decision affirmed.

CASENO: 10-02422.a1

DATE: 09/06/2011

DATE: September 6, 2011

In Re:)	
)	
----)	ISCR Case No. 10-02422
)	
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 December 22, 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 hearing. On June 8, 2011, after the hearing, 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 issues on appeal: whether Applicant was denied due process; whether the Judge failed to consider all of the record evidence; 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, we affirm the Judge’s decision.

The Judge made the following pertinent findings of fact: Applicant is seeking a security clearance in connection with his employment by a DoD contractor. Divorced, he has a son. He holds three Master’s degrees: in Business Administration, Education, and Divinity.

Applicant has several delinquent debts, for taxes owed to the Federal Government and for other things.¹ As stated above, Applicant divorced his wife. He paid her \$524,000. After that, his business began generating less income. In 2008, he withdrew \$30,000 from his retirement account to help pay for expenses due to his loss of income. He hired an attorney to assist him in resolving his financial problems, but the attorney was disbarred before he could attend to Applicant’s legal needs. He has contacted another attorney, but he has not yet paid him a fee. He hopes to pay it from a refund he expects from the state bar in compensation for lost retainer paid to the previous attorney. It is not certain that he will receive this refund.

He expects that his new attorney, once formally engaged, will work out arrangements with his creditors to pay off his debts for 20% of their worth. He testified that he believed the moral thing to do was pay off his debts in full. When asked why he planned on paying the debts cents on the dollar, he did not provide a reasonable response.²

¹The transcript and other evidence demonstrate that Applicant’s debts were largely for credit cards. The SOR also alleged two debts for delinquent mortgages. The Judge resolved these two allegations in Applicant’s favor.

²“Administrative Judge: Now, if it’s so important for you to pay the debts, why are you willing to go along with a settlement that’s only 20 percent on the dollar? [Applicant]: Well, because according to my counsel . . . the original companies have already written off that debt. They’re not looking to recoup that. It’s the collection agencies that would negotiate down to a lower amount. Administrative Judge: . . . I’m not saying—you may be able to get away with less. I’m asking you: If it’s a moral responsibility, as you seem to indicate, to make sure you pay these, then how is it okay that you’re only paying 20 percent if you owe them a lot more than that? [Applicant]: If I could afford to pay them the full amount, I would be very happy to do that . . . Administrative Judge: Is it possible that if you sold your house, you would be able to pay these all in full? [Applicant]: Yes. It is possible . . . I guess the . . . situation as I see it is that the original lenders no longer own the debts. I’m not sure what they would even do if I was able and offered to pay back the full principal. Administrative Judge: . . . The creditors haven’t told you they’re willing to accept this, have they? . . . [Applicant]: That’s true, sir. Administrative Judge: Okay, so you don’t know how much the creditors are willing to accept at this point; is that correct? [Applicant]: That’s correct, sir.” Tr. at 84-87.

Applicant has around \$800,000 in home equity. This could be used to pay off most of Applicant's creditors. He stated that he was not planning to sell the house for 24 months, so that his son could have a stable place to live. However, the son had spent the previous year in boarding school learning to ski, and planned to do so the next academic year as well.

Applicant enjoys a good reputation for his character and trustworthiness.

In his analysis, the Judge acknowledged Applicant's divorce and business downturn, which were beyond his control. However, the Judge concluded that Applicant had not demonstrated responsible action in regard to his debts,³ nor had he initiated a good-faith effort to resolve his debts.⁴ Accordingly, the Judge concluded that Applicant had not succeeded in mitigating the security concerns arising from his financial problems.

Applicant has raised the due process issue. Specifically, he states that he was not able to present a witness. Rather, he was permitted to submit a letter from the witness. He contends that the Judge did not extend sufficient weight to the letter.

Applicant intended to call a character witness. However, the witness was unable to get onto the Navy base where the hearing was being held. The Judge permitted Applicant to submit a letter from the witness as an alternative to his testimony. Tr. at 34. Under the circumstances, there is no reason to believe that Applicant was denied his right to present evidence. *See* Directive ¶ E3.1.15 ("The applicant is responsible for presenting witnesses and other evidence . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision"). Moreover, Applicant has not demonstrated that the Judge weighed the letter in a manner that is arbitrary, capricious, or contrary to law.

Applicant contends that the Judge failed to consider all of the record evidence, including his plans for debt repayment, his character evidence, and a summary of his subject interview. However, a Judge is not required to discuss every piece of record evidence. Although Applicant takes issue with the Judge's weighing of the record evidence, his presentation on appeal fails to rebut the presumption that the Judge considered all of the evidence. *See, e.g.,* ISCR Case No. 04-12742 at 3 (App. Bd. Feb. 25, 2011).

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

³Directive, 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[.]"

⁴Directive, Enclosure 2 ¶ 20(d): "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]"

(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: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

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