

KEYWORD: Guideline F

DIGEST: Applicant bears the burden of persuasion as to mitigation. Applicant has not demonstrated that the Judge failed to consider all the record evidence. Adverse decision affirmed.

CASENO: 10-02955.a1

DATE: 07/15/2011

DATE: July 15, 2011

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In Re:)
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Applicant for Security Clearance)
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ISCR Case No. 10-02955

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 November 18, 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 28, 2011, after considering the record, Administrative Judge Claude R. Heiny 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 failed to consider all of the record evidence and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge made the following pertinent findings of fact: Applicant works for a Defense contractor. He previously served in the U.S. Navy, retiring in 2006 after twenty years. He was unemployed for two months following his retirement.

He married his second wife in 2009. She suffers from cancer and has been receiving treatment since 2010. This treatment caused Applicant to miss a payment on one of his SOR debts, though the record is otherwise silent as to the effect the wife’s illness has had on Applicant’s finances.

In 2001, Applicant purchased a car for \$25,000. He made timely payments for about two years, but he became unable to continue them. He voluntarily surrendered the car, which resulted in a balance due of \$19,373. He agreed to pay the creditor \$210 a month till the debt was paid off, but he provided no documentation demonstrating actual payment.

Applicant has other delinquent debts—a bank card charge-off and a credit card collection account. These, along with the car repossession, were unpaid as of the close of the record. The SOR alleges two other debts. One of these has been settled, and the other is being paid. The Judge found in Applicant’s favor on these two debts.

However, for the remaining three he concluded that Applicant had not demonstrated mitigation. Despite some unemployment and the illness of his wife, Applicant has been employed for over four years without having resolved his ongoing financial problems. The Judge stated, “[Applicant’s] longstanding failure to repay his creditors, at least in reasonable amounts, or to arrange payment plans, reflects traits which raise concerns about his fitness to hold a security clearance.” Decision at 8.

Applicant contends that the Judge failed to consider, or mis-weighed, significant record evidence favorable to him, such as his wife’s illness and his service in the Navy. He also states that his failure to pay his debts was not a deliberate effort to avoid his responsibilities. However, a Judge is presumed to have considered all of the record evidence. *See, e.g.*, ISCR Case No. 09-06691 at 3-4 (App. Bd. May 16, 2011). In the case under consideration, the Judge noted Applicant’s wife’s illness. However, he stated that the record is silent as to the actual effect the illness has had on Applicant’s ability to pay his debts. Insofar as Applicant bears the burden of persuasion as to mitigation, the Judge’s analysis of Applicant’s evidence is supportable. Applicant has not rebutted

the presumption that the Judge considered all of the evidence. Neither has he demonstrated that the Judge mis-weighed the evidence.

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

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