

KEYWORD: Guideline F

DIGEST: The Judge held the record open for three weeks after the hearing for Applicant to provide additional documentation. Applicant was not denied an opportunity to present evidence in his case. Adverse decision affirmed.

CASENO: 10-03443.a1

DATE: 10/21/2011

DATE: October 21, 2011

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In Re: )	
)	
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)	
Applicant for Security Clearance )	
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**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 10, 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 August 2, 2011, after the hearing, Administrative Judge Darlene D. Lokey Anderson 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 denied Applicant his right to present evidence; whether the Judge erred in her application of the mitigating conditions; whether the Judge’s whole-person analysis was erroneous; and 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 made the following pertinent findings of fact: Applicant is employed by a Defense contractor and seeks a security clearance in connection with his job. A high school graduate, he attended college for two years.

Applicant has several delinquent debts, totaling over \$70,000. Before 2007, he lived with a “significant other,” sharing living expenses. Most of the credit was in Applicant’s name. However, in 2007 his partner stopped paying her share of the bills so that she could save up enough money to leave the relationship. They separated later that year. The reduction in income caused Applicant to lose his house and fall behind in his bills.

He took a second job, at a hospital, where he caught a serious infection, requiring hospitalization and surgery. He had no health insurance at the time. He received disability pay for about a year and then returned to work.

In 2010, Applicant lost his job. Although he was later reinstated, he had to leave the job due to his previous health problem. He is currently on disability, bringing home \$1,400 bi-weekly. He recently hired an attorney to file Chapter 7 bankruptcy on his behalf.

Applicant has received numerous awards and commendations for the quality of his work.

In her analysis, the Judge noted circumstances beyond Applicant’s control, such as his medical issues, job loss, etc., that affected his financial situation.<sup>1</sup> However, she also concluded that he had failed to demonstrate a track record of debt repayment or other responsible action.<sup>2</sup> She stated:

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<sup>1</sup>See Directive, 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[.]”

<sup>2</sup>See, e.g., ISCR Case No. 10-05277 at 2 (App. Bd. Jul. 8, 2011).

For some time now, the Applicant has known that his delinquent debts were out of control and at issue. Although he contacted the creditors and informed them of his circumstances, he did nothing more. Recently, the Applicant has hired an attorney and plans to file for bankruptcy protection under Chapter 7. However, at the present time, his debts remain excessive, owing, and delinquent . . . Applicant has not done enough to demonstrate that he can properly handle his financial affairs or that he is fiscally responsible. Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation, or mitigation that is sufficient to overcome the Government's case. Decision at 6.

Applicant contends that he did not have an adequate opportunity to present matters in his own behalf. He states that the Judge told him that filing for bankruptcy protection was a matter that would be helpful to her in evaluating his case. She gave him time after the close of the hearing to provide evidence of a bankruptcy filing. He has submitted a copy of his bankruptcy filing documents and requests that we remand the case to the Judge for her to consider them.

We have considered Applicant's appeal argument in light of the record. He had mentioned during the hearing that he had initially believed that filing for bankruptcy would result in a loss of his clearance. However, he testified that he had come to realize that this was not necessarily the case. Tr. at 74. At the end of the hearing, the Judge held the record open for three weeks to give Applicant a chance to submit additional evidence, including evidence concerning bankruptcy. Tr. at 78. Applicant submitted additional evidence. His post-hearing submission included a document referencing bankruptcy.<sup>3</sup> Applicant Exhibit (AE) D.

Applicant has attached to his appeal brief a bankruptcy filing dated three weeks after the date of the Judge's decision. We cannot consider new evidence on appeal. *See, e.g.*, ISCR Case No. 09-06306 at 2 (App Bd. Jan. 31, 2011). Applicant's arguments and the record as a whole provide no reason to conclude that he was denied his right to present evidence in support of his case for mitigation or that he was denied any other due process right afforded by the Directive. *See, e.g.*, ISCR Case No. 09-05176 at 2 (App. Bd. Dec. 14, 2010).

Applicant contends that the Judge did not properly evaluate the mitigating conditions, suggesting that she ignored or mis-weighed evidence that, he believes, supported his case for a clearance. However, her Decision reveals that she explicitly considered evidence favorable to Applicant, such as his job performance and the unfortunate circumstances affecting his debt situation. Her explanation that this evidence was not sufficient to mitigate the Government's security concerns, given the relative recency of Applicant's efforts to address his debts, such as his hiring a bankruptcy attorney, constituted a reasonable interpretation of the record evidence. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. *See, e.g.*, ISCR Case No. 09-06436 at 2 (App. Bd. Feb. 15, 2011). Neither has he demonstrated that

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<sup>3</sup>This is a communication from a law firm retained by Applicant. It describes the procedures involved in filing for bankruptcy protection. AE D also includes a certificate of completion of credit counseling.

the Judge mis-weighed 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 (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