

KEYWORD: Guideline F

DIGEST: The Judge’s conclusion that Applicant had not mitigated the security concerns arising from his delinquent debts is supportable. Applicant failed to rebut the presumption that the Judge considered all of the record evidence. Adverse decision affirmed.

CASE NO: 10-04633.a1

DATE: 08/14/2012

DATE: August 14, 2012

In Re:)	
)	
-----)	ISCR Case No. 10-04633
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Paula W. Phinney, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 30, 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 hearing. On May 30, 2012, after the hearing, Administrative Judge David M. White 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; whether the Judge failed properly to apply the 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 an employee of a defense contractor. He has worked for his employer for 33 years, holding a security clearance during his period of employment.

Applicant has a significant number of delinquent debts. These debts were for credit cards, totaling \$46,285, and for balances due on first and second home mortgages. These two mortgages were taken out to purchase and to upgrade his home. Applicant's financial problems began when a reduced workload caused him to lose most or all of his overtime. The Judge noted that, in an interview with an OPM investigator in 2010, Applicant stated that he was, at the time, working overtime and that he planned to pay off his delinquent debts by the end of that year. However, at the hearing, he testified that he was not working overtime and that he had paid off only one of the debts addressed in the 2010 interview.

In November 2009, Applicant was involved in an automobile accident. He was not at fault. Applicant agreed to a settlement of \$30,000, \$10,000 of which was to go to his attorney. The remainder was to be paid a few days following the hearing. Although he stated that his intention was to use the settlement to pay off his debts, he demonstrated payment of only one. The Judge held the record open for four weeks after the hearing to enable Applicant to submit evidence of (1) debt resolution and (2) a budget that would avoid additional delinquencies. Although Applicant submitted a document stating that he had made payments toward six of his SOR debts, these assertions were not supported by corroborating evidence.

In the Analysis, the Judge concluded that Applicant's circumstances raised Guideline F security concerns. However, he also concluded that Applicant had not demonstrated mitigation. The Judge stated that Applicant's financial problems were not the result of circumstances beyond his control, nor did Applicant demonstrate responsible action in regard to his debts.¹ He also observed that Applicant had not undergone financial counseling, nor did he provide evidence of progress in resolving most of the debts alleged in the SOR.² In the whole-person analysis, the Judge stated that Applicant's debts were ongoing and recent, and that these debts could become a basis for Applicant to be coerced or subjected to duress. He stated that Applicant has not demonstrated that his financial problems are unlikely to recur.³

¹Directive, Enclosure 2 ¶ 20(b): "the conditions that resulted in the financial problem were largely beyond the persons's control . . . and the individual acted responsibly under the circumstances[.]"

²Directive, Enclosure 2 ¶ 20(c): "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control[.]"

³Directive, Enclosure 2 ¶ 20(a): "the behavior happened so long ago . . . that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment[.]"

Applicant contends that the Judge did not consider significant record evidence favorable to him. Among other things, he cites to evidence that he had consulted with a debt counselor (although he had not taken a financial management course) and that he had paid certain debts. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-02671 at 3 (App. Bd. Jun. 19, 2012). The Judge discussed the evidence which Applicant has cited. However, he also plausibly explained why this evidence was not sufficient to demonstrate mitigation. For example, the Judge noted that Applicant’s claim to have made progress toward paying off six debts was not corroborated. The Judge’s treatment of the evidence which Applicant has cited in his brief is consistent with the record that was before him. Applicant has not rebutted the presumption that the Judge considered all of 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,’” 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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, 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