

KEYWORD: Guideline F

DIGEST: Applicant's household income is \$150,000. His delinquent debts total \$41,000. Adverse decision affirmed.

CASENO: 10-05894.a1

DATE: 10/21/2011

DATE: October 21, 2011

In Re:)
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)
-----) ISCR Case No. 10-05894
)
)
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 6, 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 July 28, 2011, after the hearing, 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 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 made the following pertinent findings of fact: Applicant is a senior electronics engineer who has worked for a Defense contractor since 2001. He served in the U.S. Navy from 1990 to 1995. He enjoys a good reputation among fellow workers and friends for his professionalism, trustworthiness, and good judgment.

Applicant has been married and divorced three times. He is engaged to be married to a financial analyst. They share a household and have a combined income of \$150,000.

Applicant has experienced financial problems in the past. He attributed them to spending habits of a former spouse. In 2005 Applicant was discharged in Chapter 7 bankruptcy. Since that time, however, he acquired other debts which became delinquent. The SOR alleged 10 delinquent debts. The Judge found in Applicant's favor on seven of these allegations.¹ Of the three allegations that formed the basis of the Judge's adverse findings, two were debts for student loans and another was a delinquent mortgage. Applicant attributed his mortgage delinquency to his then-wife's failure to get a job, although she had promised to do so prior to the purchase of the house. The total amount of the debts which the Judge found against Applicant was approximately \$41,000. Although not alleged in the SOR, Applicant failed to submit federal tax returns for tax years 2008, 2009, and 2010. He finally submitted returns for these tax years after the hearing.

In the Analysis, the Judge stated that Applicant had failed to demonstrate responsible action regarding the three debts referenced above. He stated that Applicant had failed to take significant action to implement a repayment plan for his student loans and that his mortgage debt remains unpaid. The Judge also noted that Applicant was dilatory in addressing debts: "In the 16 months from the [clearance] interview until the hearing, he had paid approximately \$2,500 addressing two of the SOR debts." Decision at 8-9.

Applicant contends that the Judge did not properly weigh the evidence. In his brief, he cites to evidence concerning the effect of his prior marital problems on his financial situation. He also cites to his efforts to establish a repayment plan for his student loans. The Judge addressed these matters in his Decision. Applicant's appeal brief essentially consists of an alternative reading of the evidence. This alternative reading is not sufficient to undermine the Judge's weighing of the evidence. *See, e.g.*, ISCR Case No. 07-06952 at 2 (App. Bd. Apr. 24, 2008). Applicant's brief

¹Applicant "has paid approximately \$6,000 on seven delinquent accounts addressing approximately \$9,500 of his delinquent debt." Decision at 4.

includes new evidence not contained in the record, concerning his payments on his student loans. We cannot consider new evidence on appeal. Directive ¶ E3. 1.29.

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