

KEYWORD: Guideline F

DIGEST: A Judge is presumed to have considered all the record evidence. In this case the Judge explicitly addressed the evidence cited by Applicant on appeal. Adverse decision affirmed.

CASENO: 10-06672.a1

DATE: 07/08/2011

DATE: July 8, 2011

In Re:	)	
	)	
-----	)	ISCR Case No. 10-06672
	)	
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 November 9, 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 May 10, 2011, after the hearing, Administrative Judge Robert Robinson Gales 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, or misweighed, significant record evidence and whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant works for a Defense contractor as a force protection and physical security officer. He served in the Army from 1981 until he retired in 2003. He is divorced and has no children.

Applicant has financial problems, which originated somewhere between 2003 and 2005. He has attributed his financial problems to periods of unemployment and his divorce. He stated to OPM that "he always found himself struggling to pay his bills . . ." Decision at 3. He would often use credit cards to pay bills but would find himself unable to pay off his credit cards. At some point, his debts became delinquent. Some were placed for collection, others were charged off. Additionally, he had an automobile repossessed.

The SOR lists 11 delinquent debts, for medical expenses, credit cards, telephone services, etc. Although the Judge resolved two of the debts in Applicant's favor, he noted that, as regards the remaining ones, Applicant provided no evidence that he had paid the debts, disputed them, or contacted the creditors. The repossession was the result of the lease of an automobile. At the end of the term, he attempted to return the car but was advised that he owed additional money because he had exceeded his contractual maximum mileage. "Applicant got angry, refused to pay the balance, and challenged the leasing company to come get the vehicle." Decision at 6. Although he claimed that he had settled the account, he provided no corroboration.

In 2003, Applicant's wife consulted a credit counseling service that set up a plan for the couple whereby they would pay \$190 per month. However, Applicant discontinued the payments when he lost his job and his marriage broke up. Otherwise he has never received any formal counseling, debt management guidance, etc. Applicant received numerous awards and citations during his military career. "One of his Army Achievement Medals was for 'an exceptionally courageous act in the face of grave danger.'" Decision at 7. Officials at Applicant's place of employment have a very high opinion of Applicant's reliability, work ethic, and trustworthiness.

In the Analysis portion of the Decision, the Judge noted Applicant's unemployment and divorce, which were circumstances beyond his control. However, the Judge went on to observe that Applicant had not demonstrated how these events actually caused his financial problems. For example, Applicant has received his military retirement pay as well as disability pay, even while unemployed. The Judge stated that Applicant's "plan is to eventually resolve his delinquent accounts, and he has repeatedly promised to do so. Unfortunately, his promises have not been turned into action, and he has not contacted 9 of his 11 SOR creditors." Decision at 12.

Accordingly, the Judge denied Applicant a security clearance.

Applicant contends that the Judge did not consider evidence favorable to him, such as his efforts at debt repayment, his excellent military record, his laudatory character references, his good security record, and evidence that he risked his life in the performance of his duties. These were matters which the Judge was required to consider, along with all the other record evidence. A Judge is presumed to have considered all of the record evidence. *See, e.g.*, ISCR Case No. 10-01168 at 2 (App. Bd. Apr. 22, 2011). In the case at issue here, the Judge addressed these matters explicitly. However, his explanation as to why the favorable evidence was not sufficient to mitigate the security concerns arising from Applicant's financial problems is reasonable, given the record that was before him. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. Neither has he demonstrated that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law.

Applicant states that, if he loses his clearance, his employment will be imperiled. However, the effect that an unfavorable decision may have on an applicant is not relevant or material to a security clearance determination. *See, e.g.*, ISCR Case No. 08-07528 at 2 (App. Bd. Dec. 29, 2009). 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 determination is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board

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