

KEYWORD: Guideline F

DIGEST: Applicant has not rebutted the presumption that the Judge considered all the record evidence. Adverse decision affirmed.

CASENO: 10-06975.a1

DATE: 04/19/2012

DATE: April 19, 2012

In Re:)
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 -----) ISCR Case No. 10-06975
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)
 Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ronald C. Sykstus, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 16, 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 February 9, 2012, after the hearing, Administrative Judge Thomas M. Crean 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 decision is contrary to the weight of the record evidence and, therefore, 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 field engineer. He served in the Air Force from 1983 until 1992, at which point his military position was converted to a civilian job with a Defense contractor. He and his wife have a combined monthly income of \$4,998 and monthly expenses of \$4,798.

Applicant’s SOR lists numerous delinquent debts—for credit cards, telephone services, utility bills, etc. These debts total about \$108,000. Applicant’s problems started when he had a larger than average telephone bill. He paid it, but he became behind on others. He incurred debts due to travel costs associated with family illnesses and deaths. In addition, he purchased numerous gifts and items for his family—computers, automobile tires, TV sets, video game consoles, etc. He paid for these gifts through consumer credit. After receiving the SOR, Applicant filed for bankruptcy protection. All but two of these debts were discharged. His remaining debts are a car payment and a timeshare. Applicant enjoys a good reputation for his work ethic and security worthiness.

In the Analysis, the Judge noted that Applicant’s debts were almost all discharged through his bankruptcy proceeding. However, the Judge looked to the circumstances underlying Applicant’s debts, concluding that his financial management habits evidenced unreliability, untrustworthiness, and an unwillingness to follow rules and regulations. The Judge stated that Applicant had the capacity to live within his means, but he had chosen not to do so, expending great sums on non-essential purchases. The Judge reasonably concluded that even though Applicant is now debt-free he has not established a track record upon which to base a favorable security clearance adjudication. Decision at 7.

Applicant cites to several pieces of record evidence, such as Applicant’s having held a security clearance for many years, his military service, the discharge of his debts through bankruptcy, and his character references. Applicant argues that this evidence demonstrates his worthiness for a security clearance. The Judge discussed the evidence which Applicant has cited. However, his focus upon the circumstances underlying Applicant’s debts was reasonable and supported his adverse decision. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. *See, e.g.*, ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Neither has Applicant demonstrated that the Judge mis-weighed the evidence.

Applicant requests that, if we do not reverse the decision of the Judge, we award him a clearance with probationary conditions. We do not have authority to grant an interim, conditional, or probationary clearance. *See, e.g.*, ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 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.’” *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