

KEYWORD: Guideline F

DIGEST: Applicant's representation that he submitted documents which were not considered by the Judge is not supported. Adverse decision affirmed.

CASENO: 10-09433.a1

DATE: 07/02/2012

DATE: July 2, 2012

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In Re: )  
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 ----- ) ISCR Case No. 10-09433  
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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 June 1, 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 March 26, 2012, after the hearing, Administrative Judge Richard A. Cefola 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 considered all of the 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 Judge’s decision.

The Judge made the following pertinent findings of fact: In 2004, Applicant had an appendectomy, causing him to miss five days work. As a consequence, he lost his job. In 2009 he experienced an on-the-job injury, followed by a fight to obtain medical disability status. These events caused Applicant to experience financial difficulties.

The Judge found that Applicant has numerous delinquent debts, for medical bills, utility expenses, cell phones, etc. He found that four of the debts had been resolved but that several others were ongoing as of the close of the record. In the Analysis, the Judge noted the circumstances outside Applicant’s control which were at the root of his problems. However, he stated that Applicant had not demonstrated that the majority of the SOR debts had been paid or were in the process of being resolved.<sup>1</sup> He denied Applicant a security clearance.

Applicant claims that all of his evidence did not make it into the record. At the hearing, the Judge left the record open to enable Applicant to submit additional matters. Tr. at 19-20. On February 28, 2012, Applicant submitted eleven pages of documentary evidence, consisting principally of letters from creditors regarding the resolution of certain debts. This submission was admitted as Applicant Exhibit A.

However, in his appeal brief, Applicant includes documents which he states did not make it into the record. We have, in the past, remanded cases to the appropriate Judges for consideration of documents that applicants had submitted but which were not incorporated into the records. However, in this case there is nothing in the record to corroborate Applicant’s claim that he had actually submitted additional documents. Indeed, at least three of them actually post-date the Judge’s decision. Furthermore, three documents submitted on appeal are in the hearing file.<sup>2</sup> Accordingly, we find no reason to remand the case. Insofar as the documents Applicant has attached to his appeal brief are outside the record, we cannot consider them. Directive ¶ E3.1.29. (“No new evidence shall be received or considered by the Appeal Board.”)

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<sup>1</sup>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>One of the documents that Applicant submitted with his appeal brief, a letter showing payment of a SOR debt, was included in Applicant Exhibit A. The Judge found in Applicant’s favor regarding this debt.

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