

KEYWORD: Guideline F

DIGEST: Applicant admitted the allegations in the SOR. Accordingly, these allegations were not controverted. The Judge’s material findings of security concern were supported by substantial record evidence. Applicant failed to rebut the presumption that the Judge considered all of the record evidence. Adverse decision affirmed.

CASE NO: 10-10045.a1

DATE: 01/12/2012

DATE: January 17, 2012

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In Re:)	
)	
-----)	ISCR Case No. 10-10045
)	
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 May 3, 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 October 28, 2011, after the hearing, Administrative Judge Mark Harvey 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’s findings of fact contained errors; whether the Government had met its burden of production; whether the Judge

failed to consider record evidence; whether the Judge failed properly to weigh the record evidence; and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the decision.

The Judge made the following pertinent findings of fact: Applicant is an employee of a Defense contractor, seeking reinstatement of her security clearance. She holds bachelor's and master's degrees in business administration.

In 2007, Applicant and her husband purchased investment properties in State A and State B. The couple are experienced real estate investors who have owned 14 properties since 1984. They purchased the house in State A for \$359,000. They made a \$16,000 down payment and financed the purchased with a \$280,000 first mortgage and the balance with a home equity line of credit. Eventually, they stopped making payments because Applicant's husband's pay was reduced by 10% and he was furloughed from his job for ten days. They hoped to get the bank's attention in an effort to secure a loan modification. Applicant requested that the lender accept a deed in lieu of foreclosure. Although Applicant believes that this was approved, the transaction was never accomplished. Ultimately the property was subject to a foreclosure sale. Applicant Exhibit P, IRS Form 1099-A, states that the outstanding balance on the property was \$286,989. Applicant provided no documentation to show that she was not liable for the balance.

Applicant and her husband purchased a house under construction in State B for \$193,000. They made a down payment of \$10,000 and financed the rest with an interest-only loan. They planned to flip the property as soon as construction was finished. They rented the property for several months, but eventually they missed several mortgage payments. They attempted to enter into a forbearance agreement and loan modification. At the end of the negotiation the lender made an offer which included additional charges, with a new loan balance of \$235,000. Applicant declined the offer. She attempted a short sale at \$150,000 but received an offer of \$135,000. The lender advised that, if Applicant would provide \$15,000, the lender would absorb the balance of the loss, approximately \$85,000. Applicant had \$30,00 in savings. She counter-offered \$6,000, but the lender held firm at \$15,000. She did not accept the offer, and the lender foreclosed. She provided no documentation to show that she was not liable for any shortfall or delinquency resulting from the foreclosure sale.

Applicant and her husband own a residence in a State C, with equity at about \$200,000. They have \$328,000 in stocks and bonds and a mutual fund account of \$256,882. They have two IRAs, worth \$76,251 and \$63,432 respectively. They also own a valuable pieces of property in State D. Applicant's current annual pay is about \$112,000 and her husband's is \$131,000. She and her husband both put 12% of their salaries into 401(k) plans. Their efforts to address the financial issues arising from their properties in State A and State B did not include significant use of their income or other assets.

Applicant enjoys an excellent reputation for the quality of her work performance and for her honesty, loyalty, responsibility, and trustworthiness. She has received outstanding performance evaluations.

In his analysis of Applicant's case, the Judge noted that the debts alleged in the SOR totaled

about \$577,000. They had been delinquent for over a year. He concluded that these debts raised Financial Considerations Disqualifying Conditions (FCDC) a and c.¹ In evaluating Applicant's case for mitigation, he noted evidence favorable to her, such as her education, her admission of responsibility for the debts in her clearance application and subsequent interview; and the economic circumstances which affected the value of her properties. However, he also noted that Applicant's financial condition has been fairly stable since 2009 and that she declined to follow through on an opportunity to resolve one of the debts through a short sale. Rather, the Judge stated that she abandoned the properties, resulting in foreclosure, and she did not provide persuasive evidence that she is not liable for any deficiencies. He concluded that Applicant had not demonstrated responsible action in regard to her debts. He stated that she and her husband could have taken steps to increase the funds available for debt resolution, but had not done so by the close of the record.

Applicant contends that the evidence does not support the Guideline F concerns which the Judge found to have been raised. In a DOHA hearing, the Government's burden is to present substantial evidence regarding any controverted allegation. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See* ISCR Case No. 08-06859 at 4 (App. Bd. Oct. 29, 2010). Applicant admitted the allegations in the SOR. Therefore, they were not controverted. Nevertheless, the Government presented evidence consisting of the clearance application, Applicant's answers to interrogatories, a voluminous submission of documents by Applicant, and three credit reports. Altogether they constitute substantial evidence of the delinquent debts alleged in the SOR. Given the amounts of the debts, the length of time during which they have been delinquent, and the circumstances surrounding them, the Judge's decision that the case raises Guideline F security concerns is sustainable.

Applicant contends that the Judge's findings contain errors, principally his finding that she and her husband had enough funds to pay off their debts. However, the Judge's statements to the effect that Applicant and her husband have the financial means to resolve their debts is sustainable on this record. The Judge's material findings of security concern are based on substantial record evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. *See, e.g.*, ISCR Case No. 09-05399 at 3 (App. Bd. Jan. 11, 2011). Considering the record evidence as a whole, the Judge's material findings are sustainable.

Applicant contends that the Judge did not consider all of the record evidence or that he did not properly weigh the evidence. She argues that he did not take into account the depth and severity of her financial situation, including the economic crisis and the extent of her available funds. However, a Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-07080 at 2 (App. Bd. Oct. 12, 2011). In this case, Applicant has not rebutted the presumption, nor has she demonstrated that the Judge mis-weighed 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

¹Directive, Enclosure 2 ¶ 19(a): "inability or unwillingness to satisfy debts;" Directive, Enclosure 2 ¶ 19(c): "a history of not meeting financial obligations[.]"

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: 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