

KEYWORD: Guideline F

DIGEST: Adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations' under the Directive ¶ E3.1.14 for pertinent allegations. Adverse decision affirmed.

CASENO: 11-00046.a1

DATE: 02/10/2012

DATE: February 10, 2012

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In Re: )	
)	
----- )	ISCR Case No. 11-00046
)	
)	
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 25, 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 December 9, 2011, after the hearing, Administrative Judge Noreen A. Lynch 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 Government failed to meet its burden of production and whether the Judge’s decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

Applicant and his wife purchased a home in 2003 for \$257,000 with an adjustable rate mortgage. His intention was to refinance in 2006 for a fixed rate loan. In order to consolidate credit card debt, he obtained a home equity loan of \$50,000. In 2006, he co-signed a car loan for a friend, who ultimately defrauded him.<sup>1</sup> Applicant fell behind in his mortgage payments. However, in 2006 or 2007, he purchased investment property with his brother.

Applicant considered filing for bankruptcy, but he concluded that it was too expensive. He found a program on line that explained how to understand credit reports. He wrote to creditors, requesting them to validate their claims, receiving some responses that he deemed inadequate.

The SOR lists debts totaling about \$202,000, which are confirmed by the credit reports. Applicant acknowledges the debts. He has satisfied one of the alleged debts, in the amount of \$95. He has a wage garnishment in the amount of \$34,000 for another of them. He attributed his financial problems to a two-week period of unemployment and to failure of tenants to pay rent. Applicant enjoys an excellent reputation for trustworthiness and dependability.

In the Analysis, the Judge noted favorable aspects of Applicant’s record, including his steady employment history, his favorable reputation, and his having held a clearance for many years. However, she also stated that Applicant’s financial problems were not due entirely to circumstances beyond his control. For example, his having co-signed a car loan for a person whom he did not know reflected poorly upon his judgment. She also noted that, although he did not deny having delinquent debts, his plan was merely to dispute them rather than pay them off. She concluded that Applicant had not demonstrated responsible action in resolving his debts.

Applicant contends that the Government failed to meet its burden of production, arguing that there was no evidence to show that the amounts cited in the SOR were correct. When an applicant denies an allegation contained in a SOR, the Government must produce substantial evidence of the

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<sup>1</sup>Applicant testified that the friend was the husband of a woman who offered daycare services. Although Applicant had not known the friend for a long time, he agreed to co-sign a loan so that the friend could purchase a car to assist in a proposed youth program business. The automobile was an expensive import brand. Applicant testified that, in fact, his friend had no money and had conned others. Tr. at 48-50.

truth of the 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. In this case, Applicant denied the allegations. The Government presented Applicant’s answers to the security clearance application; his answers to DOHA interrogatories; and two credit reports. When read in conjunction with the other evidence in the record, to include Applicant’s testimony, the Government’s evidence is sufficient to establish security concerns under Guideline F. *See, e.g.*, ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010) (“It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under ¶ E3.1.14 for pertinent allegations.”)

Applicant contends that the Judge did not consider, or mis-weighed, evidence concerning his efforts to verify the amounts of his debt and the parties to whom the debts were owed. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-10068 at 2 (App. Bd. Dec. 20, 2011). In this case, the Judge discussed evidence favorable to Applicant, and she discussed his testimony concerning his efforts to validate his debts. However, her adverse decision rested not only on evidence of the amounts and extent of Applicant’s debts, but also on underlying circumstances which impugned his judgment and reliability. Applicant has not rebutted the presumption that the Judge considered all of the evidence. Neither has he 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 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