

KEYWORD: Guideline F

DIGEST: Appeal Board cannot consider new evidence. Record discloses no reason to believe that Applicant was denied his right to present evidence. Adverse decision affirmed.

CASE NO: 11-00125.a1

DATE: 01/17/2012

DATE: January 17, 2012

In Re:)	
)	
-----)	ISCR Case No. 11-00125
)	
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 April 8, 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 decision on the written record. On October 31, 2011, after considering the record, Administrative Judge Joan Caton Anthony 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 Applicant was denied due process; whether the Judge failed to consider all of the record evidence; and whether the Judge’s decision was arbitrary, capricious, or contrary to law. Consistent with the following we affirm the Judge’s decision. Note: The SOR included a paragraph 2, which quoted the Guideline E security concern

as found in Directive, Enclosure 2 ¶ 15. However, paragraph 2 contained no allegation of security significant conduct. Department Counsel noted this anomaly and presented no evidence or argument under Guideline E. The Judge dismissed the reference to Guideline E. Decision at 2.

The Judge made the following pertinent findings of fact: Applicant is a married father of five. He is a shop supervisor for a Federal contractor. He has worked in that capacity, and as a mechanic, for other employers. Applicant owes delinquent debts, totaling \$141,911. Five of the debts have been charged off. In his clearance interview, he stated that he would follow up on alleged debts which he claimed not to recognize. Additionally, he entered into a 12-month temporary payment plan for a charged off second mortgage alleged in the SOR. However, he has not had credit counseling. He did not provide a financial statement, and the record contains no information as to his income, monthly expenses, savings, or other resources available for debt repayment. After receiving the SOR, he pursued Chapter 7 bankruptcy protection. He provided no documents evidencing a bankruptcy filing or showing which debts were resolved through bankruptcy.¹

In the Analysis, the Judge noted the paucity of record evidence to show compliance with Applicant's repayment plan. She stated that the record before her was sparse as to mitigating evidence and that she could not conclude that Applicant's problems were under control.

Applicant's brief includes evidence not contained in the record, for example, detailed information regarding the circumstances underlying his debts. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. *See* ISCR Case No. 10-10087 at 2 (App. Bd. Dec. 8, 2011). Applicant contends that the Judge did not consider all of the record evidence, or that she misweighed the evidence. He points to his employment record, arguing that he would not have held such jobs if he had been perceived as untrustworthy. The Decision demonstrates that the Judge considered Applicant's employment history. However, given the extent of his delinquent debts and the scarcity of mitigating evidence, her adverse decision is sustainable. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. Neither has he demonstrated that she did not properly weigh the evidence. *See, e.g.*, ISCR Case No. 04-12742 at 3 (App. Bd. Feb. 25, 2011).

Applicant cites to the Judge's finding that he had provided little evidence regarding the details of his bankruptcy. He states that information that DOHA sent him explaining the process was vague and that he did not know that he was to present more detailed information. However, he was provided with a copy of the FORM, which included the evidence underlying the Guideline F allegations. An accompanying letter advised Applicant as follows:

[Y]ou have an opportunity to review the attached copy of that complete file and submit any material you wish the Administrative Judge to consider or to make any objections you may have as to the information in the file.

The letter also advised him to pay "careful attention" to his right to be represented by counsel. Letter to Applicant, dated June 17, 2011. In a DOHA proceeding, it is the applicant's task to present

¹This finding is contained in the Analysis portion of the Judge's decision.

evidence in mitigation of the security concerns which he has admitted and/or which have been established by the Government's evidence. Applicant provided a written response to the FORM, which contained some information about his bankruptcy. The record discloses no reason to believe that Applicant was denied his right to present evidence or that he was not adequately advised of his rights under the Directive. *See, e.g.*, ISCR Case No. 08-04464 at 2 (App. Bd. May 8, 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 decision is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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