

KEYWORD: Guideline F

DIGEST: The Judge concluded that Applicant’s debts were an ongoing course of conduct, that Applicant had not demonstrated responsible action in regard to his debts, that he had not sought financial counseling, and there is little record evidence demonstrating a good-faith effort by Applicant to pay his creditors. The Judge’s conclusions are sustainable. Adverse decision affirmed.

CASENO: 11-00542.a1

DATE: 04/13/2012

DATE: April 13, 2012

In Re:)	
)	
-----)	ISCR Case No. 11-00542
)	
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 July 28, 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 24, 2012, after the hearing, Administrative Judge Robert J. Tuidor 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 erred in his application of the mitigating conditions and whether the Judge's whole-person analysis was in error, with the result that the Judge's adverse decision was arbitrary, capricious, and contrary to law. Consistent with the following, we affirm the Judge's decision.

The Judge found that Applicant is a high school graduate who has attended college, achieving 67 credits. He served in the Army from 1980 to 1984, holding a top secret clearance with access to sensitive compartmented information (SCI). He also served in the Reserves for about a year, holding a secret clearance during that time. Applicant has had four marriages, all ending in divorce. He has one child born during his first marriage, and he pays her mother \$229.50 a month in child support.

Applicant began investing in real estate in 1998, eventually acquiring 13 properties. He encountered financial difficulties, due to poor business decisions, his failed marriages, and a depressed housing market. Eight of his properties went into foreclosure and five were charged off. Applicant is attempting to repair the five charged-off properties and rent them out. Although all of the properties were rented as of the close of the record, Applicant has made no payments to the lenders. Applicant also acquired delinquent credit card debt. Applicant owns both his personal residence and his vehicles free and clear.

The Judge found in Applicant's favor regarding two of the properties alleged in the SOR, but he found that the remainder of the alleged debts, both real estate and consumer debt, were not resolved. He concluded that Applicant's debts were an ongoing course of conduct,¹ that Applicant had not demonstrated responsible action in regard to his debts,² that he had not sought financial counseling,³ and that there is little record evidence demonstrating a good-faith effort by Applicant to pay his creditors.⁴ Accordingly, the Judge concluded that Applicant had not mitigated the security concerns arising from his debts.

Applicant contends that the Judge did not properly apply the Guideline F mitigating conditions. He cites to evidence regarding his marital problems, his unemployment, a former wife's

¹Directive, Enclosure 2 ¶ 20(a): "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment[.]"

²Directive, Enclosure 2 ¶ 20(b): "the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances[.]"

³Directive, Enclosure 2 ¶ 20(c): "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control[.]"

⁴Directive, Enclosure 2 ¶ 20(d): "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]"

illness, his efforts to resolve some of the debts, his having held a security clearance in the past without incident or concern, etc. Applicant argues that, if the Judge had considered the evidence cited in the Appeal Brief, he would have concluded that the mitigating conditions had been satisfied. A Judge is presumed to have considered all of the record evidence. *See, e.g.*, ISCR Case No. 11-03025 at 3 (App. Bd. Jan. 6, 2012). The Judge discussed most of the evidence which Applicant has cited. He is not required to discuss all of the evidence in the record, which is a practical impossibility. *See, e.g.*, ISCR Case No. 09-07597 at 3 (App. Bd. Oct. 19, 2011). However, the Judge's adverse conclusions concerning the nature of Applicant's response to his debts are supported by the weight of the record evidence. In a given case, favorable evidence, including a good security record, may not be sufficient to mitigate concerns arising from an applicant's poor financial condition. *See, e.g.*, ISCR Case No. 09-00395 at 3 (App. Bd. Jun. 8, 2010) (The applicant's Guideline F concerns not mitigated despite good security record). Applicant has not rebutted the presumption that the Judge considered all of the evidence, nor has he demonstrated that the Judge's application of the mitigating conditions was erroneous.

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: Jean E. Smallin
Jean E. Smallin
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