

KEYWORD: Guideline F

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the record evidence. The Judge’s material findings of security concern were supported by substantial record evidence. Adverse decision affirmed.

CASE NO: 11-00771.a1

DATE: 04/09/2012

DATE: April 9, 2012

In Re:)	
)	
-----)	ISCR Case No. 11-00771
)	
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 26, 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 January 6, 2012, after considering the record, 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’s decision was supported by the weight of the record evidence; 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 found that Applicant had been continuously employed from 1997 until she was laid off in March 2005. After that, she was sporadically employed until she found her current job as a property management specialist for a Defense contractor. She has delinquent debts totaling over \$111,300, which she attributes to her unemployment and to her mother's death. She has not sought financial counseling. Applicant did not submit evidence sufficient to demonstrate the financial impact of her periods of unemployment. The Judge found that, after being laid off in 2005, she became obligated on a car loan for more than \$43,000. In a footnote, the Judge cited to a credit report (Item 7) reflecting an automobile loan of \$43,531 that was the subject of a repossession action. Additionally, she took six vacation cruises during a period in which she was in debt.

The Judge found that the record contained little evidence as to why Applicant became so indebted, whether the circumstances of her indebtedness were beyond her control, or whether she took responsible action in regard to her debts. She has addressed some of her delinquent debts, and the Judge entered favorable findings regarding three of the eight debts alleged in the SOR. However, he found that she had not corroborated some of her claims of debt resolution. For example, she had not provided documentation to support her claim of a payment plan for two of the alleged debts or that she has complied with such a plan.

In the Analysis portion of the Decision, the Judge noted Applicant's age, education, and service as employee of a Defense contractor. However, he also noted that the evidence in the record was "limited." Decision at 7. Given the paucity of record evidence, the Judge found that Applicant had not mitigated the security concerns raised by her financial difficulties.

Applicant contends that the Judge's findings were not supported by the evidence. In her brief, she cites to each allegation, arguing that the debts have either been paid or are being settled, and she denies that she had ever had a car repossessed. We give due consideration to Applicant's arguments. Three of the debts alleged in the SOR and that she discusses in her brief were resolved in her favor, including the one pertaining to the automobile repossession. The Judge's adverse decision is based in large measure on his findings concerning the insufficiency of the evidence to establish any of the mitigating conditions for the remaining allegations. In a DOHA proceeding, once the Government establishes security concerns, the applicant bears the responsibility to present evidence in mitigation or extenuation, according to criteria set forth in the Directive. For example, to establish Financial Considerations Mitigating Condition 20 (b)¹ an applicant would be required to present evidence that his debts arose largely from conditions beyond his control and that he acted responsibly under the circumstances. In the case before us, Applicant did not reply to the File of Relevant Material (FORM), thereby passing up an opportunity to present evidence that might establish one or more of the mitigating conditions. Despite Applicant's contentions on appeal, the Judge's material findings of security concern are based upon substantial record evidence. *See, e.g.*, ISCR Case No. 11-00970 at 2 (App. Bd. Feb. 28, 2012).

¹Directive, Enclosure 2 ¶ 20(b).

Applicant contends that she provided information concerning her debts several times but that the Judge ignored it. A review of the record shows that she provided information regarding her debts on her security clearance application (Item 5) in October 2010; in response to interrogatories (Item 6) in April 2011; and in response to the SOR (Item 4) in July 2011. As stated above, the record contains no response to the FORM, which was dated September 15, 2011. A Judge is presumed to have considered all of the evidence. A Judge is not required to discuss each piece of evidence, which is not possible in any event. *See, e.g.*, ISCR Case No. 09-07597 at 3 (App. Bd. Oct. 19, 2011). In the case under consideration, the Judge discussed much of the evidence cited by Applicant, from all three Items, such as her claims to have a payment plan for two of the debts alleged in the SOR. However, as stated above, the Judge reasonably explained why he concluded that Applicant had failed to meet her burden of persuasion. Applicant has not rebutted the presumption that the Judge considered all of the record 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

