

KEYWORD: Guideline F

DIGEST: Hearing Office decisions are not binding on other Hearing Office Judges or on the Appeal Board. A Judge is presumed to have considered all of the record evidence. Adverse decision affirmed.

CASE NO: 11-01027.a1

DATE: 07/09/2012

DATE: July 9, 2012

In Re:)	
)	
-----)	ISCR Case No. 11-01027
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Paula W. Phinney, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On November 7, 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 April 17, 2012, after the hearing, Administrative Judge Elizabeth M. Matchinski 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 her whole-person analysis and whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant is an engineer for a Defense contractor. She holds a college degree. Applicant divorced her husband in the early 1990s. Her daughter was seriously injured in an automobile accident in the mid-2000s. Applicant focused on her daughter's needs and failed to attend to her financial obligations. Later, she undertook to assist her daughter with her college expenses. In 2006 and 2007, she began to focus upon her parents' medical problems, again neglecting her financial situation.

Applicant has numerous delinquent debts, including one for Federal income taxes. The amount alleged in the SOR was \$19,498.19, for tax years 2006 to 2009. In May 2009, the IRS issued a notice of intent to levy for nonpayment of taxes, which was returned to the IRS as refused or unclaimed. Applicant has entered into a repayment plan. She did not specifically intend to avoid paying her taxes, attributing her delinquencies to oversight and disorganization.¹

Some of the other debts in the SOR were withdrawn before the close of the record, and the Judge found in Applicant's favor for several others, noting circumstances beyond Applicant's control which affected her financial condition. However, the Judge concluded that Applicant had not mitigated the security concern arising from her delinquent taxes. The Judge stated that Applicant had been placed on notice as early as 2009 that her tax debt was delinquent but that she did not make any payments until a year later. Moreover, the Judge concluded that Applicant had not corroborated some of her claimed payments to the IRS. The Judge noted Applicant's installment agreement, but she stated that Applicant had set up such agreements previously, which had been cancelled for reasons not set forth in the record. The Judge concluded that the evidence points only to Applicant as the cause of her delay in paying her Federal taxes. She stated that Applicant had not demonstrated a track record of tax payment.

In the whole-person analysis, the Judge cited to evidence of Applicant's work record, her technical expertise, and her history of security compliance. However, she stated that Applicant's handling of her tax responsibilities was not commensurate with her education or responsibilities and did not show an understanding of the importance of timely compliance with income tax obligations. The Judge stated that Applicant's failure to have ensured that sufficient amounts were withheld from her income to satisfy her tax liabilities suggested "a lack of urgency in resolving her debts." Decision at 12.

Applicant cites to Hearing Office Decisions which reached favorable outcomes. These decision are distinguishable on their facts. Each case must be decided on its own merits. Directive,

¹In a footnote to her Findings of Fact, the Judge cited to statements by Applicant as to the timing of her filing of tax returns that were not consistent with other evidence. The Judge characterized Applicant's statements in this regard as "error."

Enclosure 2 ¶ 2(b). Furthermore, Hearing Office decisions are not binding on the Appeal Board or other Hearing Office Judges. *See* ISCR Case No. 09-08505 at 2 (App. Bd. Jun. 14, 2012).

Applicant asserts that the Judge failed to consider all of the record evidence. In doing so, he discusses the letters of recommendation entered into the record. There is a rebuttable presumption that a Judge has considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-04808 at 3 (App. Bd. Jun. 15, 2012). Moreover, in the case under consideration here, the Judge made findings of fact based on the letters of recommendation and discussed these findings in her whole-person analysis. 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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge

Member, Appeal Board