

KEYWORD: Guideline F

DIGEST: The Judge's conclusion that there is a paucity of evidence to demonstrate mitigation is supported by the record. Adverse decision affirmed

CASENO: 11-01259.a1

DATE: 04/10/2012

DATE: April 10, 2012

In Re:)
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 -----) ISCR Case No. 11-01259
)
)
 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 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 decision on the written record. On January 24, 2012 after considering the record, Administrative Judge Darlene D. Lokey Anderson denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge made the following pertinent findings of fact: Applicant is divorced, with one son. He pays monthly child support in the amount of \$324. He was discharged in Chapter 7 bankruptcy in 2005. After that, he acquired more delinquent debt. The total amount of the debts alleged in the SOR was over \$18,000. In the years following his bankruptcy discharge, he experienced low paying jobs, short-term jobs, and periods of unemployment. He was fired from two jobs. Additionally, he divorced his wife in 2010.

The Judge found that Applicant intends to pay his delinquent debts "as soon as time permits." Decision at 3. Applicant's personal financial statement, submitted as part of his answers to DOHA interrogatories, states that Applicant has \$51 left over at the end of the month, without making payment toward his delinquent debts. In March 2011, Applicant entered into a contract with a debt consolidation company. Although the contract provides that, with monthly payments of \$358, Applicant will have his debts paid off in 36 months, there is no evidence in the record of even one payment under this agreement.

The Judge resolved two of the alleged debts in Applicant's favor, finding that he had paid them off, based upon his response to the SOR. However, she found against Applicant for the remaining debts. She acknowledged circumstances affecting Applicant's debts which were at least somewhat beyond his control, such as his employment difficulties and his divorce. However, she also noted that Applicant's having been fired by two separate employers diminished the mitigating force of his unemployment. She noted that, as stated above, Applicant had supplied no evidence that he had actually made even a single payment under his agreement with the debt consolidation agency. The Judge stated that there was insufficient evidence of rehabilitation or of other mitigating circumstances to justify the award of a security clearance.

In his appeal brief, Applicant points to evidence of his divorce and the effect this had on his debt problems. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). The Judge made findings about Applicant's divorce and discussed it in her analysis. However, her overall conclusion that there is a paucity of evidence to demonstrate mitigation is supportable on this record. Applicant attached two receipts to his answer to the SOR, but he did not respond to the File of Relevant Material. 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