

KEYWORD: Guideline F

DIGEST: Applicant has not rebutted the presumption that the Judge considered all the evidence. Adverse decision affirmed.

CASENO: 11-03403.a1

DATE: 08/23/2012

DATE: August 23, 2012

In Re:)	
)	
-----)	ISCR Case No. 11-03403
)	
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 August 17, 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 June 15, 2012, after the hearing, Administrative Judge Roger C. Wesley 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 failed to consider all of the record evidence; whether the Judge mis-weighed the record evidence; and whether the Judge’s adverse 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 was unemployed between March 2005 and February 2007. During this time he lived on his unemployment insurance, income from a 401(k) fund, and credit cards. After he was laid off in 2005, Applicant stopped making payments on his debts. He made no payments during the two years of his unemployment. Many of the debts were for medical expenses, although others were for credit cards.

In February 2006, Applicant decided to file for Chapter 7 bankruptcy protection. He engaged a law firm to handle the case for him. He assumed that the firm had filed for bankruptcy on his behalf and that his debts had been discharged. However, as Applicant later learned, the firm had not done so. A subsequent check with the bankruptcy court confirmed that there had been no filing. He also learned that the firm itself had gone bankrupt. He has recently engaged a new law firm to handle his bankruptcy case.

In the Analysis, the Judge concluded that Applicant’s circumstances raised Guideline F security concerns. He further concluded that Applicant had not met his burden of persuasion as to mitigation. He acknowledged that Applicant’s problems were rooted in circumstances outside his control, his job loss. However, he also concluded that Applicant had not demonstrated responsible action in regard to his debts, citing to evidence that Applicant had not followed through with his earlier law firm to ensure that it filed a petition for bankruptcy on his behalf.¹ The Judge stated that the lack of follow-up action in regard to his legal case precluded favorable application of Mitigating

¹Directive, 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[.]”

Conditions 20(c)² and (d)³ as well. He also concluded that Applicant had failed to show that he had a plan to address his debts or that he had demonstrated conduct consistent with such a plan.⁴

Applicant cites to evidence of his job loss and his unfortunate experience with the law firm. To the extent that he is arguing that the Judge failed to consider this evidence, we note that the Judge made extensive findings on these matters and discussed them in the Analysis. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. Neither has he demonstrated that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 08-11345 at 3 (App. Bd. Oct. 6, 2010). Applicant attached to his appeal brief a document pertaining to the second law firm he has engaged. We cannot consider new evidence on appeal. *See, e.g.*, ISCR Case No. 10-00925 at 3 (App. Bd. Jun. 26, 2012).

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: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

²Directive, 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[.]”

³Directive, Enclosure 2 ¶ 20(d): “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]”

⁴*See, e.g.*, ISCR Case No. 09-08462 at 3 (App. Bd. May 31, 2011)(An applicant must “act responsibly under the circumstances and develop a reasonable plan for repayment, accompanied by ‘concomitant conduct,’ that is, actions which evidence a serious intent to effectuate the plan.”)

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

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