

KEYWORD: Guideline F; Guideline H; Guideline E

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the record evidence. A good prior security record does not preclude an adverse clearance decision. Adverse decision affirmed.

CASE NO: 11-03909.a1

DATE: 08/30/2012

DATE: August 30, 2012

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| In Re:                           | ) |                        |
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| -----                            | ) | ISCR Case No. 11-03909 |
|                                  | ) |                        |
| 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 January 20, 2012, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations), Guideline H (Drug Involvement), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 22, 2012, after the hearing, Administrative Judge Rita C. O’Brien 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; whether the Judge failed properly to apply the mitigating conditions; and whether the Judge’s adverse security clearance

decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline E are not at issue in this appeal. We affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant has worked for several Defense contractors since 2002. He previously worked as a correctional officer. He has held a security clearance since 2002 and a top secret clearance with special access since 2004. He has performed duties in middle east countries during the past four years. After returning from one of his deployments, Applicant and his wife agreed to separate. He then returned to a deployed location, and his wife remained in the family house. She was to pay the bills, and Applicant transferred about \$8,000 per month to enable her to do so. However, upon his return from deployment, he discovered that she had not paid the bills. He and his wife subsequently divorced. The divorce decree did not assign responsibility for individual debts. One of the debts which Applicant's wife failed to pay was the monthly mortgage. They had bought the house with first and second mortgages. Eventually the house went into foreclosure, which discharged the first mortgage. Applicant worked out a repayment plan for the second. He also paid off other non-SOR debts. The SOR alleged two other debts, one for a car loan and another for a timeshare, which also became delinquent due to Applicant's wife's failure to pay them. The car was eventually auctioned off. Applicant believes that his wife is going to file for Chapter 7 bankruptcy protection and that this will relieve him of further responsibility.

In 2006 Applicant was in a car with a friend and some others. Someone lit up a marijuana cigarette, and Applicant took a puff. He was aware that he was subject to drug testing, but he did not believe such limited use would work to his harm. Applicant's job-related urinalyses have all been negative. He stated that he had signed a statement to the effect that he had no intention to use drugs in the future, although he did not provide a copy of it at the hearing.

In the Analysis, the Judge concluded that Applicant's debts and his use of marijuana while holding a clearance raised security concerns. She concluded that Applicant had demonstrated mitigation of the debt pertaining to his mortgages. However, she concluded that he had not mitigated the remaining two debts. She stated that Applicant had not made an attempt to address them, relying on second-hand information that his wife may seek bankruptcy protection and the "unfounded supposition" that her discharge would relieve him of his responsibility as well. Decision at 7. Concerning the drug use, the Judge noted that it was neither recent nor frequent, having occurred only once. However, she also noted that Applicant held a security clearance when he used the marijuana and he thought about his employer's policy of drug testing before doing so. She concluded that the circumstances of Applicant's use of marijuana evidenced untrustworthiness and poor judgment.

Applicant cites to evidence which he believes supports his case for a clearance, for example, the length of time since his use of marijuana, his never having failed a drug test, his payment of certain debts, and his ex-wife's contribution to his financial problems. The Judge made findings about this evidence, and she discussed it in the Analysis. Her decision rested in large part upon her conclusion that Applicant's financial circumstances and drug use impugn his good judgment and reliability, which is supportable on this record. Applicant has not rebutted the presumption that the

Judge failed to consider, or mis-weighed, the record evidence. *See, e.g.*, ISCR Case No. 08-11345 at 3 (App. Bd. Oct. 6, 2010). Applicant also cites to his 10 years of having held a security clearance. The Judge made appropriate findings about Applicant’s security history. We find no reason to disturb the Judge’s adverse decision. A good prior security record does not preclude an adverse clearance decision. *See* ISCR Case No. 09-06775 at 3 (App. Bd. Aug. 30, 2011).

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