

KEYWORD: Guideline F

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the evidence. Applicant cited to evidence from outside the record, which the Appeal Board cannot consider. Adverse decision affirmed.

CASE NO: 11-05512.a1

DATE: 10/24/2012

DATE: October 24, 2012

In Re:)	
)	
-----)	ISCR Case No. 11-05512
)	
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 4, 2012, 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 August 14, 2012, after considering the record, Administrative Judge Matthew E. Malone 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge made the following pertinent findings of fact: Applicant has worked for her current employer, a Defense contractor, since 2000. She most recently received a security clearance in 2005. Applicant was married in 2003 and divorced in 2007.

The SOR alleged 15 delinquent or past-due debts totaling over \$60,000. Applicant admitted all of these debts. Two of the SOR debts were reduced to judgements, and her wages have been garnished to satisfy some of her debts. Applicant attributes her financial problems to a divorce. She claims that her ex-husband has not paid his share of the marital debts. She also asserted that her boyfriend has lost his job. Applicant has received no financial counseling,¹ and she has a negative cash flow each month.

In the Analysis, the Judge acknowledged that Applicant's delinquent debts were affected by her divorce, a circumstance outside of her control. However, he concluded that her debts are ongoing and substantial, compared with her income, and that Applicant has not addressed her debts in a reasonable or timely manner. The Judge stated that debt resolution through wage garnishment did not equate to a good-faith effort to resolve the debt.²

Applicant's brief cites to evidence of her efforts at debt repayment and her divorce. To the extent that she is contending that the Judge did not consider this evidence, a Judge is presumed to have considered all of the evidence in the record. The Judge discussed record evidence of those debts that had been resolved. However, he provided a reasonable explanation for his conclusion that such evidence was not sufficient to mitigate the security concerns raised by the SOR. Applicant's argument is not sufficient to rebut that presumption. Neither has she demonstrated that the Judge mis-weighted the evidence. *See, e.g.*, ISCR Case No. 10-08550 at 4 (App. Bd. Mar. 20, 2012). Applicant's brief cites to evidence from outside the record, such as an article concerning inaccuracies in credit reports and debt resolution occurring after the close of the record. We cannot consider new evidence on appeal. *See, e.g.*, ISCR Case No. 11-03623 at 3 (App. Bd. Jul. 25, 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.*

¹See Directive, 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[.]"

²Directive, Enclosure 2 ¶ 20(a): "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment[.]"

Directive, Enclosure 2 ¶ 20(b): "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances[.]"

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

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