

KEYWORD: Guideline J; Guideline F

DIGEST: In 2011, Applicant pled guilty to contributing to the delinquency of a minor. Sh is subject to tax liens. Adverse decision affirmed.

CASENO: 11-06688.a1

DATE: 07/05/2012

DATE: July 5, 2012

In Re:)	
)	
-----)	ISCR Case No. 11-06688
)	
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 December 7, 2011, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct) and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992,

as amended) (Directive). Applicant requested a hearing. On April 20, 2012, after the hearing, Administrative Judge Robert Robinson Gales 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's decision.

The Judge made the following pertinent findings of fact: Applicant is an employee of a Defense contractor, seeking to obtain a security clearance for the first time. She holds an associate's degree. Applicant is currently married. She has two daughters from a previous marriage.

In 2011, Applicant pled guilty to contributing to the delinquency of a minor, a misdemeanor. She was sentenced to 24 months in jail, suspended; two years supervised probation; completion of a parenting class; participation in individual or family counseling; and court costs. Moreover, the court ordered her to have no contact with her younger child until deemed appropriate by her therapist or the court and to have no contact with her older child until deemed appropriate by the court or until the child turns 18. The case arose from Applicant's relationship with a registered sex offender who made sexual advances to Applicant's younger child.

Applicant has a number of delinquent debts, for medical expenses, credit cards, etc. Applicant went through a divorce in 2002 and later that year filed for bankruptcy, which cleared up her existing debts. However, within a few years she acquired more which included tax liens.

In the Analysis, the Judge concluded that Applicant's circumstances raised security concerns under Guidelines J and F. He stated that it had been less than a year between Applicant's conviction and the close of the record, an insufficient amount of time to demonstrate rehabilitation. He also stated that Applicant had not provided sufficient evidence to mitigate the Financial Considerations concern. He concluded that she had never adequately explained why she could not keep up with her monthly payments, nor had she demonstrated responsible action in regard to her debts. She did not corroborate her claim that some of her debts had been paid, nor did she provide evidence as to the basis of her disputes of other debts. The Judge ultimately concluded that Applicant had failed to meet her burden of persuasion.

Applicant cites to evidence concerning her conviction, arguing that it was a one-time occurrence and that she had completed some of her required actions, such as the parenting class. She also cites to other evidence, such as the marital breakup of 2002 and her attendance at financial management classes. To the extent that Applicant is contending that the Judge did not consider this evidence, we note that a Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-03433 at 3 (App. Bd. Mar. 13, 2012). Applicant has not rebutted this presumption, nor has she demonstrated that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law.

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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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