KEYWORD: Guideline F

DIGEST: A judge is presumed to have considered all the record evidence. In this case the Judge explicitly the favorable aspects of the record cited by Applicant on appeal. The Judge plausibly explained why they were not sufficient to mitigate the security concerns in Applicant's case. Adverse decision affirmed.

CASENO: 09-06688.a1

DATE: 01/10/2011

DATE: January 10, 2011

In Re:	)	
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Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
D. Michael Lyles, Esq., Department Counsel

FOR APPLICANT
Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On February 16, 2010, 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 September 30, 2010, after the hearing, Administrative Judge Mary E. Henry 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 and whether the Judge's application of the mitigating conditions was erroneous. Consistent with the following discussion, we affirm the decision of the Judge.

Facts

The Judge found that, in 2007, Applicant was laid off by his employer of fourteen years. At that time, Applicant had a condominium that he had purchased for investment. The purchase was secured by first and second mortgages on the property. Several months after he lost his job, Applicant defaulted on his mortgage payments. The property has gone into foreclosure. The SOR alleged other debts as well.[1] Applicant admitted four of the debts alleged in the SOR. He claimed that some of his debts were due to an incident of identity theft. Applicant received tax refunds of $3,000 and $3,300 respectively for tax years 2008 and 2009. "He did not provide any information which showed that this money paid any of his debts." Decision at 5.

In the Analysis portion of the decision, the Judge acknowledged Applicant's job loss and incident of identity theft. However, she also stated that Applicant had not demonstrated that his financial problems are being resolved or that other mitigating conditions fully apply. The Judge noted a paucity of record evidence supporting Applicant's case for mitigation. She stated that, insofar as doubts about an applicant's security worthiness must be resolved against him or her,[2] she could not grant Applicant's request for a security clearance.

Discussion

Applicant contends that the Judge did not consider all of the record evidence, for example Applicant's evidence of identity theft, unemployment, and the foreclosure sale. A Judge is presumed to have considered all the evidence in the record. *See, e.g.*, ISCR Case No. 09-01735 at 2 (App. Bd. Aug. 31, 2010). In this case, the Judge explicitly discussed Applicant's claim of identity theft, his foreclosure action, his unemployment, and other matters favorable to him, citing to several of Applicant's exhibits. The Judge plausibly explained why Applicant's evidence was not sufficient

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[1]The SOR alleges that the debts underlying the Judge's adverse formal findings were owed to a telecommunications company and to several banks, including the mortgage lender.

[2]*See* 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."

to mitigate the security concerns in his case. Applicant has failed to rebut the presumption that the Judge failed to consider 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 treatment of the mitigating conditions and her adverse decision are 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).

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