

KEYWORD: Guideline F

DIGEST: The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or vice versa. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. Applicant also argues that she does not have access to classified information. However, we have no authority to consider the extent to which an applicant may or may not actually have access to classified information in the course of his or her job. Adverse decision affirmed.

CASENO: 17-03043.a3

DATE: 08/27/2019

DATE: August 27, 2019

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In Re:	)	
-----	)	ISCR Case No. 17-03043
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 16, 2018, DoD 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 November 27, 2018, after the hearing, Administrative Judge Mark Harvey initially denied Applicant’s request for a security clearance, which she appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. On March 12, 2019, and June 11, 2019, we remanded this case to the Judge for corrective action. It is now before us on Applicant’s appeal of the Judge’s latest adverse decision that is dated June 21, 2019.

Applicant raised the following issue in her current appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact and Analysis**

At the time of the hearing, Applicant was a 59-year-old employee of a Federal contractor. She has served in the military and has retired from Federal civil service. She has worked for the Federal government or government contractors for 41 years.

The SOR alleged that Applicant had Federal tax deficiencies. She failed to file some of her Federal income tax returns in a timely manner. She filed her 2013 Federal income tax return in November 2017 and her 2014-2015 Federal income tax returns in May 2017. She indicated that she did not file her tax returns as required because she was distracted by family issues that included a child’s and in-law’s drug addiction, a child’s incarceration, and a grandchild’s severe injury. She estimated she owes about \$12,500 in past-due Federal taxes. In February 2018, she began making monthly payments of \$380 to the IRS under a payment plan and made all of the scheduled payments up to the time of the hearing. The Judge found in favor of Applicant on the Federal tax debt and against her on the tax filing deficiency.

The SOR further alleged that Applicant had seven other delinquent debts. The Judge’s favorable findings on four of the debts are not contested on appeal. The Judge found against Applicant on (1) a charged-off bank debt for about \$500 that she conceded she did not get around to making payments to resolve; (2) a rental apartment debt in collection for over \$4,200 that she disputed, but failed to provide a copy of the dispute; and (3) a past-due debt for about \$340 with a balance of about \$5,000 on an uninsured, wrecked vehicle that she said she plans to pay.

While Applicant has resolved some debts, she did not act responsibly in handling other alleged debts. She did not provide a good reason for failing to file her Federal tax returns in a timely manner and did not show sufficient progress toward resolving three delinquent debts. She has not established that similar financial problems are unlikely to recur.

## Discussion

Applicant's appeal brief contains documents and assertions that were not presented to the Judge for consideration. Such assertions include that she hired a debt resolution company and that certain debts have been disputed and removed from her credit report. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29. Applicant also raised assignments of error regarding SOR allegations that the Judge found in her favor. We need not address those assignments of error.

Applicant challenges the Judge's conclusion that she has not made sufficient progress toward resolving her delinquent debts. She argues she has demonstrated that she is dedicated to resolving her financial problems. In her arguments, she highlights the family issues that contributed to her financial problems, her efforts to resolve them, and her character evidence. The Appeal Board has previously stated that the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-00650 at 2 (App. Bd. Jun. 27, 2016). Applicant also argues that she does not have access to classified information. However, we have no authority to consider the extent to which an applicant may or may not actually have access to classified information in the course of his or her job. *See, e.g.*, ISCR Case No. 14-00508 at 2-3 (App. Bd. Jan. 23, 2015).

Applicant has failed to show the Judge committed any harmful error. 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* at 528. *See also* Directive, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

**Order**

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan  
Michael Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

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

Signed: James F. Duffy  
James F. Duffy  
Administrative Judge  
Member, Appeal Board