

KEYWORD: Guideline F

DIGEST: The Judge, as the trier of fact, 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. Adverse decision affirmed.

CASENO: 18-00936.a1

DATE: 04/24/2019

DATE: April 24, 2019

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In Re:)	
)	
-----)	ISCR Case No. 18-00936
)	
)	
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 April 25, 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 decision on the written record. On February 12, 2019, after considering the record, Administrative Judge John Bayard Glendon 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’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant, who is 30 years old, earned a bachelor’s degree in 2010. After college, he experienced periods of unemployment and underemployment. In 2016, he began working for a defense contractor. The SOR alleged that Applicant had eight delinquent student loans with balances that total over \$65,000. He admitted seven of those allegations. In responding to the SOR, he noted that he took a “hiatus” in his efforts to pay his debts when his wife was pursuing a graduate degree. Applicant provided documentation showing he made some payments on the student loans. In this regard, the Judge found:

Without a more detailed explanation from Applicant, I can only conclude that his evidence is intended to show that he has made payments on two or possibly more of his student loan debts, whether alleged in the SOR or not. He presents this evidence in support of his claim that he intends to continue paying these debts at this time and intends to pay all remaining debts alleged in the SOR when he has more income available to him in the future.¹

Applicant presented a budget without any explanation that showed a monthly net family income of about \$7,781, expenses of about \$5,099, and “Discretionary/Savings” of about \$2,682.² He also provided a document reflecting a total debt of \$114,560, which may reflect that he and his wife have more student loan debts, and plan to pay them in three years.

The Judge’s Analysis

Applicant failed to address his delinquent student loans in any serious manner until he received the SOR. Upon graduating from college, he failed to develop a repayment plan. These circumstances were within his control, and he failed to act responsibly in addressing them.

¹ Decision at 3.

² Decision at 3-4.

Discussion

In his brief, Applicant does not challenge any of the Judge’s rulings or findings of fact. He challenges the Judge’s application of Mitigating Conditions 20(a)³ and 20(c).⁴ He contends that he provided payment receipts for his “then active” debt accounts, but acknowledged that the account numbers do not directly match those in the SOR because the debts have been passed through collection agencies. Appeal Brief at 1. He also argues that he resumed making payments towards the debts when his wife completed her graduate degree in 2018. His arguments amount to a disagreement with the Judge’s weighing of the evidence. As we stated in the past, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. The Judge, as the trier of fact, 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). Moreover, even if an applicant has actually paid his debts or is making payments on them, a Judge may still consider the circumstances underlying the debts for what they may reveal about the applicant’s worthiness for a clearance. *See, e.g.*, ISCR Case No. 14-02394 at 3 (App. Bd. Aug. 17, 2015).

Applicant has not established that the Judge committed any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The 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, 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

³ Directive, Encl. 2, App. A ¶ 20(a) states, “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[.]”

⁴ Directive, Encl. 2, App. A ¶ 20(c) states, “the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control[.]”

The Decision is **AFFIRMED**.

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

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

Signed: Charles C. Hale
Charles C. Hale
Administrative Judge
Member, Appeal Board