

KEYWORD: Guideline F

DIGEST: Applicant contends that the Judge erred in concluding that she has not demonstrated that her problems are resolved. She contends that there is no evidence to show that her financial difficulties will persist. However, it is an applicant’s job to present evidence in mitigation. Directive ¶ E3.1.15. In this case, the Judge’s conclusion that Applicant’s bankruptcy is too recent to establish a track record of debt payment and thereby meet her burden of persuasion as to mitigation is sustainable. Adverse decision affirmed.

CASENO: 18-01762.a1

DATE: 06/26/2019

DATE: June 26, 2019

In Re:))	
))	
-----))	ISCR Case No. 18-01762
))	
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 June 29, 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 April 18, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr., 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’s Findings of Fact and Analysis

Applicant has been employed in low-paying jobs since 2007. Her SOR lists numerous delinquent debts, for vehicle accounts, education loans, medical expenses, utilities, etc. About a month after she answered the SOR, Applicant filed for Chapter 7 bankruptcy protection, and most of her debts were discharged in March 2019. Her education loans were not discharged, however, and she has been making small, regular payments on them. She was not successful in having her education debts placed in forbearance. Applicant makes about \$425 each pay period. Her character references recommend her for a clearance, although they did not disclose knowledge of her security-significant issues.

The Judge concluded that Applicant’s bankruptcy discharge is too recent to establish a track record of debt resolution. Noting her monthly expenditures, he also concluded that she will still have a problem with maintaining financial stability even after bankruptcy. He stated that Applicant’s “whole-person” evidence—for example, her character references—were not sufficient to meet her burden of persuasion.

Discussion

Applicant contends that the Judge erred in concluding that she has not demonstrated that her problems are resolved. She contends that there is no evidence to show that her financial difficulties will persist. However, it is an applicant’s job to present evidence in mitigation. Directive ¶ E3.1.15. In this case, the Judge’s conclusion that Applicant’s bankruptcy is too recent to establish a track record of debt payment and thereby meet her burden of persuasion as to mitigation is sustainable. *See, e.g.*, ISCR Case No. 14-04565 at 2 (App. Bd. Sep. 18, 2015) (Promises to maintain financial good health are not a substitute for a track record of debt payment). *See also* ISCR Case No. 18-02250 at 3 (App. Bd. May 23, 2019) (An ability to argue for a different interpretation of the evidence is not sufficient to show that a Judge weighed the evidence in a manner that was 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, 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 Y. Ra’anan
Michael Y. 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