

KEYWORD: Guideline F; Guideline E

DIGEST: The Appeal Board cannot consider new evidence on appeal. Applicant’s arguments are not enough to show that the Judge mis-weighted the evidence. Adverse decision affirmed.

CASE NO: 14-04300.a1

DATE: 12/30/2015

DATE: December 30, 2015

In Re:	)	
	)	
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	)	
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 October 7, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested that the case be decided on the written record. On September 29, 2015, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Nichole L. Noel denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable decision.

The Judge made the following findings of fact: Applicant is 32 years old. The record established that he owed approximately \$29,000 on ten accounts and that he received written reprimands from his employer for improper use of his corporate travel card in 2009 and 2013. Applicant's financial problems began around 2009 while his wife attended school full-time. He struggled to pay the family's expenses on a single income. His eviction from an apartment resulted in two judgments. Two of his cars were repossessed. Short of cash, Applicant decided to use his corporate travel card to pay \$3,600 in back-rent. Applicant's employer issued him a written reprimand once it learned of his actions. Applicant later used the corporate card for approximately \$600 in personal expenses. He paid those charges.

Applicant anticipated receiving a \$30,000 inheritance from his grandmother that he intended to use to resolve his delinquent debt. Although it is unclear if Applicant received the money, he has provided documentation that he has resolved seven of the debts listed in the SOR. He claims that a \$277 debt has been satisfied, but he provided no supporting documentation. In August 2015, Applicant entered into payment plans to resolve his two largest debts (each approximately \$12,000). The payments are slated to begin in September 2015. Although Applicant claims that he is now in good financial shape, he did not provide any information on his wife's current employment status or any information about their household finances.

The Judge reached the following conclusions: Applicant has demonstrated an inability to pay his debts as well as a history of not doing so. He receives partial mitigation for the steps in resolving all but the two largest debts in the SOR. However, Applicant's use of his corporate credit card for personal expenses highlights the ultimate concern in financial cases—that Applicant will engage in improper acts for his financial benefit. He has not provided any evidence to support a finding of financial rehabilitation or reform such that it is unlikely he will again find himself in a similar situation. Financial considerations remain. Applicant's misuse of his corporate credit card is also disqualifying under the personal conduct guideline. He did not submit any evidence to mitigate these concerns. Applicant did not self-report the conduct, and he concealed his conduct from his employer until he was confronted. Accordingly, doubts remain about Applicant's security worthiness.

Applicant argues that he has made significant efforts to address his outstanding indebtedness and that these efforts run counter to the Judge's concerns about his character. Regarding his use of the corporate credit card, he states that his use of the card earlier does not match the behavior he has exhibited since, all while holding a security clearance. Applicant's arguments do not establish error on the part of the Judge.

Applicant's appeal submission contains matters that are not part of the case record. The Board cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. 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*. See, e.g., ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). Applicant's more recent efforts at repairing his finances and his compliance with rules regarding his corporate credit card were evidence that the Judge was required to consider. However, such evidence does not mandate a favorable decision. Applicant's arguments are 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. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In this case, the Judge made sustainable findings that Applicant had a significant history of not meeting financial obligations and had made the poor choice of improperly using an employer-issued credit card to deal with financial shortfalls. Central to the Judge's analysis was her conclusion that Applicant had not produced sufficient evidence to establish an improvement in financial health, habits, or practices. This conclusion is supported by the record. The Judge adequately discussed why the disqualifying conduct established under Guideline F was not mitigated.

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. See, e.g., ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes 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 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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

**Order**

The Judge's decision is AFFIRMED.

Signed: Michael Ra'anan \_\_\_\_\_  
Michael 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