

KEYWORD: Guideline F

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the evidence in the record. Applicant’s appeal argument was not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASE NO: 14-05740.a1

DATE: 12/30/2015

DATE: December 30, 2015

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In Re:)	
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-----)	ISCR Case No. 14-05740
)	
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 February 6, 2015, 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 that the case be decided on the written record. On October 13, 2015, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Arthur E. Marshall, Jr. denied Applicant’s request for a security clearance. Applicant timely 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 53 years old. She admits all but one of the debts noted in the SOR (in the aggregate amount of approximately \$16,000). She denies responsibility for a \$98 telecommunications bill, but states that, despite the denial, she would pay the debt. With regard to this last debt, no evidence of payment or dispute was presented. Applicant first acquired delinquent debt in 2008 as a result of medical expenses. A former boyfriend lent her \$10,000. She repaid \$500. He obtained a judgment against her for the balance. Applicant also claimed that during the time she was accumulating the debt, she was dealing with the passing of several relatives and friends, which overwhelmed her and caused her to make bad decisions. In 2013, Applicant was adversely affected by the government shutdown. In 2014, she hired a debt consolidator to help her resolve her debts, but she had to abandon her plans to work with the consolidator when she lost her job later in the year. It is her present intent to hire another debt consolidator. She provided no documentary evidence, however, reflecting any efforts to work with her creditors or with a consolidator. There is no documentary evidence showing she has devised a reasonable plan for approaching her delinquent debts aside from her intent to again try a debt consolidation service.

The Judge reached the following conclusions: Applicant's delinquent debts are multiple in number and remain unaddressed. There is insufficient information about her current financial situation, her methodology for handling her debts, and related issues to gauge whether the behavior demonstrated here will be limited to this time frame and not recur. She does not explain how any of the events in her life contributed to her accumulation of debt or to what extent. The facts fail to indicate that she behaved responsibly during that time. There is no evidence showing that Applicant received actual financial counseling. There is no evidence her debts are currently being brought under control. Furthermore, Applicant has not presented a plan or strategy for addressing her debts, other than expressing her desire to renew the services of a debt consolidator. None of the available financial considerations mitigating conditions apply. Financial considerations security concerns remain.

Applicant asserts that she is a person of honor and integrity and enumerates several steps she has taken to resolve her debt situation. Some of these assertions constitute new evidence, which the Board cannot consider. Directive ¶ E3.1.29. She asserts that the Government did not fully adjudicate the factual conditions that mitigate the security disqualifying concerns. Applicant has not established error on the part of the Judge.

A Judge is presumed to have considered all the evidence of record. *See, e.g.*, ISCR Case No. 12-01325 at 3 (App. Bd. Dec. 11, 2015). Applicant has not rebutted this presumption. 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 assertion of the steps she intended to take to address her delinquent finances was 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. Central to the Judge’s analysis was his finding that Applicant had not provided sufficient evidence of how her life circumstances affected her ability to manage her finances and his finding that Applicant had not sufficiently corroborated any claims at debt resolution. These findings resulted in a conclusion that Applicant had not met her burden of proof to establish mitigation. That conclusion is supported by the record.

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