

KEYWORD: Guideline F; Guideline E

DIGEST: The presence of some mitigating evidence does not alone compel the Judge to issue a favorable security clearance decision. Adverse decision affirmed.

CASENO: 09-02800.a1

DATE: 10/08/2010

DATE: October 8, 2010

In Re:	)	
	)	
-----	)	ISCR Case No. 09-02800
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On December 23, 2009, DOHA 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 a hearing. On July 26, 2010, after the hearing, Administrative Judge Matthew E. Malone denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse decision is arbitrary, capricious or contrary to law.

Applicant contends that the Judge's adverse decision should be reversed because the Judge did not correctly weigh the evidence. In his brief he states that all events concerning his financial situation were provided to DOHA during the hearing. He then summarizes the evidence and argues why it should support a favorable determination.

Applicant's argument does not demonstrate that the Judge's decision is arbitrary, capricious or contrary to law. 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). 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. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In this case, the Judge made the following relevant findings of fact: Applicant had accrued 21 delinquent debts totaling approximately \$95,203. Decision at 2. Many of the debts had originally arisen when Applicant became unemployed in 2006 and experienced divorce-related support obligations. *Id.* at 7. Even though Applicant has had a steady income since 2007, most of his debts remained unpaid and had not been addressed in a constructive manner. *Id.* at 8-9. At the time of the hearing, Applicant still owed \$54,000 in delinquent debt. *Id.* at 7. He had failed to follow through on a debt counseling and consolidation effort in 2008. *Id.* at 9. Applicant intended to file for federal bankruptcy protection, but had not retained an attorney for that purpose until less than a week before his hearing. *Id.* at 8.

In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing and that he had not met his burden of persuasion as to mitigation. See, e.g., ISCR Case No. 05-07747 at 2 (App. Bd. Jul. 3, 2007). The Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. He found in favor of Applicant under Guideline E and as to seven of the SOR factual allegations under Guideline F. However, he reasonably explained why the mitigating evidence was insufficient to overcome the government's security concerns. The Board does not review a case *de novo*. 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 unfavorable security clearance decision under Guideline F is sustainable.

**Order**

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board

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