

KEYWORD: Guideline F; Guideline B

DIGEST: The Judge found that Applicant had a lengthy and serious history of not meeting financial obligations. Applicant still owed significant amounts on delinquent debts. Thus the Judge could reasonably conclude Applicant's financial problems were still ongoing. Adverse decision affirmed.

CASENO: 07-07266.a1

DATE: 06/27/2008

DATE: June 27, 2008

In Re:)	
)	
-----)	ISCR Case No. 07-07266
)	
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 September 28, 2007, 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 B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 11, 2008, after the hearing, Administrative Judge David M. White 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 clearance decision under Guidelines F and B is sustainable.

Applicant argues that the Judge’s adverse decision under Guideline F should be reversed because the Judge did not give sufficient weight to Applicant’s mitigating evidence which showed that as to his four delinquent debts, he had paid off one, made small payments on two others, and was still negotiating as to the other. Applicant argues that the Judge’s adverse decision under Guideline B should be reversed because his Nigerian family members do not make him vulnerable to coercion, exploitation, or pressure.

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). An applicant’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).

As to the Guideline F allegations, the Judge found that Applicant had a lengthy and serious history of not meeting financial obligations. At the time the case was submitted for decision, Applicant still owed significant amounts on his delinquent debts. In light of the foregoing, the Judge could reasonably conclude that Applicant’s financial problems were still ongoing. *See, e.g.*, ISCR Case No. 06-23894 at 2 (App. Bd. Mar. 6, 2008). 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 mitigating conditions. He found in Applicant’s favor as to one of the SOR allegations. However, he reasonably explained why the evidence which Applicant had presented in mitigation was insufficient to overcome all of the government’s security concerns. The Board does not review a case *de novo*. The favorable record 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 2 (App. Bd. Sep. 4, 2007). Given the record that was before him, the Judge’s ultimate unfavorable security clearance decision under Guideline F is sustainable.

Because the Judge's adverse clearance decision under Guideline F is sustainable, the Board need not address the issues raised by Applicant under Guideline B.

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