

KEYWORD: Guideline F

DIGEST: Although Applicant disagrees with the weight the Judge assigned to certain pieces of evidence, he has not demonstrated that the Judge's analysis is arbitrary, capricious, or contrary to law. Applicant points to other decisions by the Hearing Office, which he argues support his request for a favorable determination. The Board gives due consideration to these cases. However, each case must be decided upon its own merits. Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. Adverse decision affirmed.

CASENO: 07-08820.a1

DATE: 03/03/2009

DATE: March 3, 2009

_____)	
In Re:)	
)	
-----)	ISCR Case No. 07-08820
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On March 6, 2008, DOHA 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 December 19, 2008, after the hearing, Administrative Judge Martin H. Mogul denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge’s adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a 53 year-old employee of a Defense contractor. In 2004 he petitioned for Chapter 13 bankruptcy, which was dismissed in 2005. Applicant had filed for Chapter 7 protection in 2000, in which he discharged debts of \$42,467. Since his discharge in bankruptcy, Applicant had amassed a substantial amount of delinquent debt, for such things as a salary overpayment, consumer purchases, income taxes, etc. The total amount of debts alleged in the SOR, and for which the Judge found against Applicant, exceeds \$150,000. Applicant sent letters to some of his creditors, seeking to establish a repayment plan. However, the Judge noted that Applicant had mailed the letters on the day of the hearing. Applicant also took some on-line courses in financial management, although he took them within three days of the hearing. In the Analysis section of his decision, the Judge stated that Applicant “has not made a good faith effort to resolve his current overdue debts. I cannot conclude that Applicant has acted responsibly under these circumstances because he only attempted to contact most of these creditors on the day of the hearing[.]” Decision at 6.

The Board has considered all the arguments contained in Applicant’s brief, evaluating them in light of the record as a whole. Although Applicant appears to disagree with the weight which the Judge assigned to certain pieces of evidence, *e.g.*, documents regarding disputed debts, he has not demonstrated that the Judge’s analysis is arbitrary, capricious, or contrary to law. *See* ISCR Case No. 07-07144 at 3 (App. Bd. Oct. 7, 2008). In support of his appeal, Applicant points to other decisions by the Hearing Office, which he argues support his request for a favorable determination. The Board gives due consideration to these cases. However, each case “must be decided upon its own merits.” Directive ¶ E2.2.3. Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. *See* ISCR Case No. 06-24121 at 2 (App. Bd. Feb. 5, 2008). In light of the record as a whole, the Judge has drawn a rational connection between the facts found and his ultimate adverse security clearance decision, both as regards the mitigating conditions and the whole-person factors. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). *See also 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 decision that "it is not clearly consistent with national security to grant Applicant eligibility for a security clearance" is sustainable on this record. Decision at 7. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security'").

Order

The Judge's adverse security clearance decision 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