

KEYWORD: Guideline F

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

CASENO: 08-05846.a1

DATE: 07/07/2009

DATE: July 7, 2009

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In Re:)	
)	
----)	ISCR Case No. 08-05846
)	
)	
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 3, 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 the case be decided on the written record. On April 24, 2009, after considering the record, Administrative Judge Noreen A. Lynch 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 issue 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.

Applicant states that (i) she is not a threat to national security and would not jeopardize herself, her family, her business and her country in any way; (ii) her debts are mostly attributable to marital abuse, a medical issue, and fraud; (iii) she is currently making payments on collection items, has paid some of them off, and a few other debts listed on her credit report have been paid off. Applicant's assertions do not demonstrate error on the part of the Judge.

Some of Applicant's assertions on appeal make reference to matters taking place after the close of the record. These matters constitute new evidence, which the Board cannot consider. Directive, ¶ E3.1.29.

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).

In this case, the Judge found that Applicant had a lengthy and serious history of not meeting financial obligations. The Judge also found that at the time of the close of the record, Applicant still had substantial delinquent debts in an aggregate amount of over \$14,000, and had not presented evidence of payments to creditors or the establishment of valid repayment plans. These findings are supported by the record evidence. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing. 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 mitigating conditions and whole-person factors. She found that Mitigating Condition ¶ 20(e)¹ applied to the case, but only affected two of Applicant's outstanding debts. The Judge reasonably explained why the evidence which Applicant had presented in mitigation was insufficient to

¹ "[T]he individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue." Directive, ¶ E2.20(e).

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 evidence and articulated a satisfactory explanation for her decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfs. 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)). Therefore, the Judge’s ultimate unfavorable security clearance decision under Guideline F is sustainable.

Order

The decision of the Judge is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: Michael D. Hipple

Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board