

KEYWORD: Guideline F

DIGEST: A party's disagreement with the Judge's weighing of the evidence is not sufficient to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law.

CASENO: 08-08332.a1

DATE: 11/19/2010

DATE: November 19, 2010

In Re:)
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 -----) ISCR Case No. 08-08332
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)
 Applicant for Security Clearance)
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)

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 February 26, 2010, 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 August 24, 2010, after the hearing, Administrative Judge Arthur E. Marshall, Jr., denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge failed properly to weigh the record evidence and whether the Judge’s adverse security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following discussion, we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant is an account manager for a Defense contractor. He has a high school diploma. Applicant and his wife divorced, and he provides financial support for their three children.

Applicant served in the U.S. Marine Corps from 1988 to 1992. Later, during the early 2000s, Applicant worked at low-paying jobs. Most of his earnings went to pay his child support obligations.

In 2005, Applicant was looking for a job in another state. He bought a house in that state. Within a month of buying it, he found that he did not get the job. He ultimately had a judgment entered against him due to failure to pay his mortgage on the house.

He subsequently returned to his previous domicile to look for work. He obtained a job earning him about \$36,000 a year. He bought another house, for \$417,000. He intended to use it as a home and as an investment. He put no money down on the house, hoping to make his mortgage payments by renting out some of the rooms to boarders. He was unsuccessful in finding work or boarders, and he fell behind in his mortgage payments.¹ Neither was he able to refinance the mortgage. The house was subsequently sold in a foreclosure sale. He fell behind in other bills as well.

Applicant reconciled with his ex-wife. In mid-2010 he secured a Defense contract, which provides him with a monthly gross salary of \$14,750.

The delinquent debts which formed the basis of the Judge’s adverse formal findings consist of a debt owed to a bank and three mortgage debts, one of which, as stated above, was reduced to judgment.

Appellant contends that the Judge did not extend appropriate weight to evidence he believed favorable to him, such as his history of good job performance, his Marine Corps service, and

¹“Q: How much did you buy it for? A: \$417,000 . . . Q: How much were you making at the time? . . . A: About \$3000 a month . . . Q: And how much were your mortgage payments on a \$417,000 loan? A: The mortgage payment was about – it was close to \$3800.” Tr. at 27-28.

circumstances underlying his mortgage debts which he believes were beyond his control. However, 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. 06-21819 at 2 (App. Bd. Aug. 13, 2009).*

In support of his appeal Applicant has presented new evidence concerning his efforts at debt repayment following the close of the record. We cannot consider this new evidence. *See Directive ¶ E3.1.29. ("No new evidence shall be received or considered by the Appeal Board"). See also ISCR Case No. 08-05379 at 2 (App. Bd. Sep. 15, 2010).*

The record supports a conclusion 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 Judge's adverse decision is sustainable on this record. "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).

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