

KEYWORD: Guideline F

DIGEST: On appeal Applicant contends that the Judge failed properly to apply the mitigating conditions, citing to evidence that his financial problems were related to his job loss. The Board finds no reason to conclude that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 10-03701.a1

DATE: 03/14/2012

DATE: March 14, 2012

In Re:)	
)	
-----)	ISCR Case No. 10-03701
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Warren J. Borish, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 27, 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 November 21, 2011, 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 erred in his application of the pertinent mitigating conditions and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant is an engineer working for a Defense contractor. Applicant's monthly income includes his current salary plus a monthly pension. He supplemented his income by teaching and by tutoring, but the teaching position was eliminated in 2009, resulting in a loss of \$6,000 to \$7,000 annually. Applicant fell behind on his mortgage payments. Additionally, his 24-year-old son, who lives away from home, is unemployed and has health problems. Applicant provides his son's rent, groceries, phone/cable/internet costs, taxes, etc., and he is a co-signer on his son's college loans. The son is waiting to resolve a medical condition before he seeks employment. Applicant does not have a savings or checking account. He cashes his monthly checks and pays his bills in cash. The SOR alleged 23 delinquent debts. Three have been paid or settled, and the Judge also found that Applicant had possibly made "cursory, incomplete attempts" on five others. The Judge resolved the three paid debts in Applicant's favor. He entered adverse findings for the remaining ones, citing a lack of evidence of payment or other significant efforts at debt resolution.¹ Applicant first experienced financial problems in 2008, a year before he lost his teaching job. He has considered filing for bankruptcy protection, though by the close of the record Applicant had not filed. Chapter 13 bankruptcy is his only articulated strategy for addressing his debts. Applicant owes both federal and state taxes, though these debts were not alleged in the SOR. Applicant's wife is not able to work, due to medical problems.

In the Analysis portion of the Decision, the Judge concluded that Applicant's circumstances raised Financial Considerations security concerns. In examining Applicant's case for mitigation, he stated that Applicant's debts are multiple and, for the most part, unaddressed. He noted that Applicant's financial problems were, to a limited extent, affected by circumstances beyond his control. However, Applicant has not taken steps to reduce his expenditures, for example seeking his son's cooperation. The Judge concluded that Applicant "has not fully committed to a bankruptcy plan" and that "Applicant has been exceptionally indulgent with regard to his grown, educated, and unemployed adult son." Decision at 7, 8. Accordingly, Applicant has not demonstrated a history of debt repayment under such a plan.

Applicant contends that the Judge failed properly to apply the mitigating conditions, citing to evidence that Applicant's problems were related to his job loss, arguing that this event was at the root of his many delinquencies. Applicant's argument appears to be little more than a disagreement with the Judge's weighing of the evidence. After considering the record as a whole, we find no

¹The Judge found that Applicant "provided documentary evidence regarding his actions to address some of [his] debts. However, no documentary evidence was introduced regarding any of the other delinquent debts noted in the SOR." Decision at 3.

reason to conclude that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Applicant takes issue with the Judge's conclusion that he is not fully committed to bankruptcy and that he is indulgent to his son. In discussing the first of the challenged statements, Applicant cites to evidence outside the record, which we cannot consider. See Directive ¶ E3.1.29 ("No new evidence shall be received or considered by the Appeal Board"). We have examined these statements and find them to be reasonable inferences from the evidence. Moreover, they support the Judge's conclusion that Applicant has failed to demonstrate mitigation. Applicant argues the Judge erred in placing the origin of Applicant's financial difficulties in 2008 rather than 2009, when Applicant suffered a decline in income. Given that the amount of the delinquencies exceeds \$100,000, this argument is not persuasive, even if one accepts Applicant's claim on appeal that the decline was \$12,000 rather than the \$6,000 to \$7,000 that the Judge found.

In support of his appeal, Applicant has submitted other Hearing Office decisions, which he contends support his case for a security clearance. We give these cases due consideration. However, Hearing Office decisions are not binding on other Hearing Office Judges or on the Appeal Board. See, e.g., ISCR Case No. 10-00218 at 4-5 (App. Bd. Oct. 17, 2011). The cases which Applicant has cited have significant factual differences from his own. They do not demonstrate that the Judge's adverse findings were arbitrary, capricious, or contrary to law.

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). See also Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody _____

James E. Moody

Administrative Judge

Member, Appeal Board