

KEYWORD: Guideline F

DIGEST: Applicant did not respond to the File of Relevant Material when he had an opportunity to do so. The Board cannot consider new evidence on appeal. Adverse decision affirmed.

CASENO: 10-07382.a1

DATE: 07/08/2011

DATE: July 8, 2011

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In Re: )  
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 ----- ) ISCR Case No. 10-07382  
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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 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 elected to have his case decided on the written record. Applicant did not submit written materials in response to the Government's File of Relevant Material (FORM). On March 29, 2011, Administrative Judge Thomas M. Crean 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 adverse security clearance decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable decision.

The Judge made the following pertinent findings of fact: Applicant is 41 years old and is married with one child. Applicant has delinquent debts with nationally recognized credit cards totaling over \$109,000. Prior to the fall of 2004, Applicant claims his credit cards were maintained in accordance with his agreement with the creditors, his payments were on time, and more than the minimum amount due was paid. In late 2004, the creditors raised the interest rates on the accounts from 13% to 24%. Applicant withheld payment on the credit card bills because of what he classifies as the creditors' predatory lending practices. Applicant claims that the creditors' actions were not in accordance with his agreement with the creditors. Applicant contacted each creditor by telephone requesting an explanation for the interest rate increase. Applicant has not presented documentation concerning any payments made on the debts. He has not presented any documentation concerning any action taken, legal or otherwise, to challenge the alleged predatory lending practices of the creditors.

The Judge reached the following conclusions: The credit reports and Applicant's statements establish three delinquent accounts. The credit report alone is sufficient to establish the other two delinquent debts. No mitigating conditions apply. The behavior is current and ongoing because Applicant refuses to pay the credit card debt. Applicant is able to pay his debts. He did not present any evidence of any counseling or even attempts to contact experts to verify the correctness of his understanding of his legal obligations concerning the debts. He did not present any evidence to show payment of the debt, good-faith or otherwise. Applicant has not presented adequate evidence to show he is resolving or intends to resolve his delinquent debts.

Applicant asserts that he was not living outside his financial means, he made an earnest attempt to satisfy the debt, and any concerns raised by his debts can be mitigated. He argues that the Judge's statement that he has not established a meaningful track record of paying delinquent debts is misleading. Applicant indicates that he disagrees with the Judge's analysis that none of the mitigating conditions apply to the case. Applicant maintains that he has unsuccessfully attempted to get his creditors to give him a "final substantiated invoice" so that he may accurately repay the amounts he owes without running the risk of overpaying his creditors. Applicant states that despite his efforts, he is not getting responses from his creditors. Applicant's assertions do not establish error on the part of the Judge.

Applicant's brief contains numerous assertions regarding his debt situation, his approach to those debts, and his motivations in not making payments. Applicant also attached numerous

documents to his appeal brief. Applicant was provided an opportunity to respond to the Government's FORM but did not do so. The Board cannot consider new evidence. *See*, Directive ¶ E3.1.29.

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). 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. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In this case, the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. He discussed the applicability of the mitigating factors listed under Guideline F and indicated in some detail why the mitigating conditions did not apply. This conclusion was reasonable given the Judge's findings that Applicant has historically refused to pay his debts because he did not consider them legitimate, and yet Applicant produced no evidence establishing attempts to resolve any disputes with his creditors. In the absence of evidence that Applicant has engaged in any meaningful debt resolution, the Judge's ultimate conclusion in the case is supported by the record evidence.

The Board does not review a case *de novo*. The favorable 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 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his 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 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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

### **Order**

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

**CONCURRING OPINION OF ADMINISTRATIVE JUDGE JAMES E. MOODY**

I agree with my colleagues in their resolution of this appeal. The Judge's ultimate conclusion—that Applicant had failed to meet his burden of persuasion regarding mitigation—is supported by the record.

Applicant's Response to the SOR avers that he had been seeking, unsuccessfully, for his creditors to validate their claims, in accordance with Federal law. This could be construed as questioning the legitimacy of the debts alleged in the SOR. However, there is no basis in the record to question the legitimacy of the debts. To the contrary, the record contains substantial evidence of five delinquent debts whose total amount exceeds \$109,000. There is no reason to believe that either the SOR or the record materially overstate extent of Applicant's indebtedness, and there is insufficient evidence to explain why Applicant amassed debts of such a magnitude. Under the circumstances, Applicant's uncorroborated claims to have been seeking debt validation are not sufficient to demonstrate a track record of responsible action.

Applicant contends that he has no privity of contract with agencies that had purchased his debts from some of the original creditors. He also argues that the security concerns in his case were mitigated by the operation of the statute of limitations. However, these arguments do not demonstrate that the Judge erred. *See, e.g.*, ISCR Case No. 06-07554 at 2 (App. Bd. Oct. 12, 2007). Accordingly, the Judge's adverse decision is sustainable.

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board