

KEYWORD: Guideline F

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

CASENO: 12-02315.a1

DATE: 08/08/2014

DATE: August 8, 2014

In Re:)	
)	
-----)	ISCR Case No. 12-02315
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Corey R. Williams, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 10, 2013, DoD 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 that the

case be decided on the written record. On May 16, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr. denied Applicant's request for a security clearance. Applicant 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 security clearance decision.

The Judge made the following findings: Applicant is 41 years old. Sixteen delinquent debts totaling over \$30,000 are at issue. In his 2011 clearance application, Applicant acknowledged that he had been working to clean up his debts for the last five years. In fact, a number of medical bills were not paid until 2013 and he first made minimal payments on five larger consumer bills in 2013. Applicant attributed his indebtedness to moving from his privately owned home to a rental home in 2008 without selling the home or procuring a renter therefor, as well as medical expenses related to his wife's chronic illness. Applicant also attributed his troubles to changes in his company's policies concerning stipends and reimbursements for company travel, as well as his wife taking a salary from a company she started without making quarterly income tax withholding payments.

With increasing pressures on the family's disposable income, Applicant resorted to using credit cards to cover household expenses as well as some of his wife's company expenses. When his situation drifted out of control, he stopped paying on many of the SOR debts to focus on several larger debts which did not appear in the SOR. Applicant provided no details about these accounts and how they affected his ability to pay on the SOR debts. Applicant was able to settle an \$11,000 SOR debt for a lump sum payment of \$2,160 in early 2014. He also paid off a \$6,500 debt to the IRS at about the same time. He did this by liquidating company stock from his stock plan. Applicant has made payments on some of his debts. However, he has not resolved five medical debts totaling in excess of \$2,000. He claimed that he might have paid some of these debts in 2006, but he has not provided any proof of payment. He has not documented any efforts to dispute these debts. Applicant has not received any financial or credit counseling.

The Judge reached the following conclusions: The Government established a case for disqualification under Guideline F, and Applicant did not meet the security concerns. Applicant has an extensive history of financial difficulties, which are ongoing, and seem unlikely to be resolved any time soon. Applicant's financial problems date to at least 2006. Beginning in 2008, they were exacerbated by circumstances both within and without his control. It appears that, despite earlier knowledge of the Government's concerns, he did not begin to take meaningful action on his debts until after he received the Government's interrogatories in 2013. Significant factors contributing to his financial problems were within his control. Applicant has not been responsible in addressing his debt. Stopping payments on multiple accounts while addressing others might be a reasonable approach, but only with specifics as to how such an approach was advantageous in terms of lessening overall debt. The record contains no specifics. Also, this approach does not really explain his inability over at least two years to address the ten SOR debts that were under \$200 each.

Applicant's efforts have taken place under the impetus of this clearance proceeding. Applicants are expected to address their finances because of their moral and legal obligation to pay their bills, not under threat of losing their clearances. Under the circumstances, Applicant's efforts cannot be considered a good-faith effort to address his debts. Applicant has apparently disregarded his financial obligations for many years. Further progress on his current debt is required before he can demonstrate that his finances no longer present a security problem.

Applicant argues that the Judge failed to consider all the record evidence, and that he erred by not favorably applying the mitigating conditions. Applicant's assertions fail to establish error.

Applicant makes numerous statements on appeal about various efforts to resolve his outstanding overdue debts. A number of these are assertions of fact that fall outside the case record. The Board cannot consider new evidence on appeal. *See* Directive ¶ E3.1.29.

A Judge is presumed to have considered all the evidence in the record unless he or she specifically states otherwise. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009). In this case, the Judge discussed in considerable detail the full circumstances of Applicant's financial difficulties and also discussed instances in which Applicant did pay, or made an effort to resolve, individual debts. Applicant has failed to establish that the Judge did not consider all the facts.

Applicant asserts that he has established a case for mitigation of the government's security concerns. He states that he has been in contact with his creditors and has either settled or is in the process of resolving his debts. He states that his financial troubles were not the result of irresponsible spending, but resulted from circumstances beyond his control. He takes specific issue with the Judge's conclusion that his debt resolution efforts have taken place under the impetus of the security clearance proceeding, noting that many of his efforts preceded the issuing of the SOR. The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. *See, e.g.*, ISCR Case No. 06-25157 at 2 (App. Bd. Apr. 4, 2008). 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). Applicant's appeal brief essentially argues for an alternate interpretation of the record evidence. After reviewing the Judge's decision in light of the record as a whole, the Board finds no reason to disturb the Judge's analysis. Central to that analysis were the Judge's conclusions that: (1) the causes of Applicant's financial difficulties were not all beyond Applicant's control; (2) the record contained no satisfactory explanation for why Applicant waited a number of years before attempting to get his financial house in order; and (3) there are no prospects for Applicant getting his overdue debt problem resolved in the foreseeable future. These conclusions are supported by the record evidence.

Applicant takes specific issue with the Judge's conclusion that he waited until the security clearance process began before he undertook debt resolution, arguing that he took numerous steps

to address the problem before the issuance of the SOR. Applicant's argument overlooks the fact that the security clearance process does not begin with the SOR. Applicant's security clearance application was completed in 2011. By the time he executed a response to the Government's interrogatories in mid-year 2013, he had taken no action on nine of the outstanding overdue debts that were later listed in the SOR. The Judge's conclusion that it took the security clearance process to spur Applicant into action is sustainable.

Applicant cites to decisions by the Hearing Office which, he contends, support his case for mitigation. The Board gives these cases due consideration as persuasive authority. However, each case must be decided on its own merits. Nothing in the cases establishes error on the part of the Judge in this case. In any event, Hearing Office cases are binding neither on the Board nor other Hearing Office Judges. *See, e.g.*, ISCR Case No. 11-10178 at 3 (App. Bd. Aug 29, 2013).

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 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 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 clearance decision is sustainable.

Order

The decision of the Judge is AFFIRMED.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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