

KEYWORD: Guideline F

DIGEST: Absent corroboration of Applicant’s claims, the Judge could reasonably conclude the financial problems were ongoing. Adverse decision affirmed.

CASENO: 12-11660.a1

DATE: 07/09/2014

DATE: July 9, 2014

In Re:)	
)	
-----)	ISCR Case No. 12-11660
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 5, 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 14, 2014, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Wilford H. Ross 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 of fact: Applicant is 31 years old and single. The SOR lists 14 delinquent debts, totaling approximately \$40,000. The existence and amounts of these debts is supported by four credit reports issued between 2011 and 2014. Applicant denies all the allegations in the SOR, stating that he has paid or resolved all his debts. Record evidence establishes that Applicant has paid four debts. Two debts are the subject of unresolved disputes. In the case of eight other debts, the record does not establish that they are resolved. Regarding these debts, Applicant's mere statements of fact that the debts have been paid are insufficient to establish satisfaction of the debts, given Applicant's burden to show that the debts have been resolved. The unresolved indebtedness totals at least \$21,000.

According to Applicant, he got behind in his bills because he had to help his family with their financial problems beginning in 2006. He stated he had retained a law firm to help him with his debts, but he did not submit any documentation indicating the scope of their work, or what they have accomplished for him. By his own figures, Applicant is financially well off. He lives with his family and has a monthly net remainder of \$3,816. The interrogatory filled out by Applicant specifically states the types of documentation that would show he had made payments on his debts.

The Judge reached the following conclusions: Applicant's financial difficulties have been in existence since at least 2006. He states that beginning in 2012 he began to take action to resolve those debts. However, Applicant did not provide documentation supporting all his statements that he has made payments to his creditors, despite being informed in writing of what specific evidence the Government was looking for. In addition, he did not explain why it took him approximately six years to begin to pay the debts, when he has been gainfully employed at a good salary for the entire time. At the present time, the evidence concerning Applicant's entire financial situation does not support a finding that there are clear indications that the problem is being resolved or is under control. There remains serious potential for pressure, coercion, exploitation, or duress. Applicant has not mitigated the security significance of his financial situation concerning past-due debts.

Applicant describes mitigating circumstances in his case. He states that he had to assume the financial responsibility for taking care of his parents when they had medical issues and lacked insurance. He asserts that he is now married and has been getting his life back on track. He states that he has been paying his bills and the Government's claim about outstanding delinquent indebtedness is incorrect. Applicant has not established error on the part of the Judge.

In support of his appeal, Applicant has submitted new matters not contained in the record, which the Board cannot consider. *See* Directive ¶ E3.1.29. ("No new evidence shall be received or

considered by the Appeal Board”). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The Judge found that Applicant had not provided sufficient evidence to establish that he no longer owed numerous debts that were delinquent. In light of the absence of corroboration of Applicant’s statements that he had paid his debts, 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 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).

In this case, the Judge made sustainable findings that Applicant had a significant history of not meeting financial obligations. The Judge listed the potentially applicable mitigating conditions and then discussed applicable components of those factors in his analysis. Applicant has not demonstrated that the Judge erred when he weighed the mitigating evidence against the seriousness of the disqualifying conduct.

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 ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. 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