

KEYWORD: Guideline F

DIGEST: Favorable language in the interview summary merely reflected what Applicant had told the interviewer, not interviewer’s opinion of Applicant’s security worthiness. Applicant’s circumstances raised concerns under Guideline F. Applicant’s wife’s employment status was relevant in evaluating Applicant’s case for mitigation. Adverse decision affirmed.

CASE NO: 14-00161.a1

DATE: 11/18/2014

DATE: November 18, 2014

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In Re:)	
)	
-----)	ISCR Case No. 14-00161
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Eugene I. Kane, Jr., Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 28, 2014, 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 a hearing. On September 2, 2014, after the hearing, 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 57 years old. He has delinquent debts totaling \$85,000. His financial problems date from 2006, when he left his last full-time job to pursue an underdeveloped business venture. He started his own company and served as its president until 2013, when he started his current employment. He had hoped to invent, produce, and market to consumers a certain device. Applicant admits he had no experience setting up a business, no investors and no formal business plan. He did not secure any government-backed funding, but relied on household savings and financial support from his father. He never undertook any legal framework for his company, because he had never progressed beyond the development stage for his company and never reached the point where he was delivering goods or services to a paying client.

Applicant abandoned the invention idea in 2007, and started a consulting company. This brought in money, but not enough to cover living expenses and bills. During this time, he began to exhaust his savings account and continued to receive financial assistance from his father. Between 2007 and 2009, numerous credit accounts fell into arrears. In 2009, he returned to school to obtain a graduate degree. His decision to return to school was predicated on his understanding that his wife would get a job and his father would continue to provide support. His wife was unable to work, however. Even though his education was essentially "free" because he held a teaching assistant position, among others, with the school, Applicant fell behind on his mortgage payments and let his house go into foreclosure in 2011.

After the hearing, Applicant consulted a debt-resolution company, which suggested alternatives to address delinquent debts, but failed to address three debts totaling nearly \$55,000. The plan relies on Applicant's father continuing to provide \$550 per month in assistance, and Applicant obtaining full-time employment. The written record does not indicate whether Applicant has entered into the plan. Applicant has no retirement account, and has no savings. Aside from his post-hearing consultation with the debt-resolution company, he has received no credit of financial counseling.

The Judge reached the following conclusions: The Government established a case for disqualification under Guideline F and Applicant did not mitigate the security concerns. Applicant's \$85,000 debt was voluntarily incurred and remains unresolved. The delinquent debt is directly attributable to Applicant's financial irresponsibility in leaving his regular job to undertake a business venture for which he appears to have been particularly unqualified and unprepared. He had no clear plan for how he was going to pay his living expenses during his company's early, unprofitable stages. He has no plan on how to recover from his current circumstance and satisfy his arrears with his creditors. Applicant cannot be considered to have acted responsibly as he did not begin to take action until after his security clearance hearing. He is unable to make any payments on his delinquent debts, good faith or otherwise.

Applicant asserts that the Government conceded in its written submissions at the hearing that it did not have any concerns that his outstanding debts presented a security risk. He also asserts that he had a business plan. He further argues that the Government has articulated no specific objection regarding him, except the fact that he went into a business venture that did not become successful. He states that the Government's appears to adhere to the proposition that trying to pursue the American dream of being in business for yourself is a security risk if you fail. Applicant's assertions do not establish error on the part of the Judge.

Applicant's assertion that the Government conceded that it had no security concerns regarding Applicant is without merit. Applicant bases his assertion on language from a report of investigation that was admitted into evidence. The text at issue stated that none of Applicant's financial issues could be used for blackmail or coercion, that his family was aware of these issues, that nobody would question Applicant's ability to pay his debts or live within his means, that his overall financial situation is getting better, and he is currently meeting all his obligations on time. Applicant appears to be arguing that these statements represent the investigator's assessment of his case. However, the language in question is merely a summary of Applicant's answers to the interviewer's questions. It does not represent the interviewer's opinion of Applicant's security worthiness. *See, e.g.*, ISCR Case No. 10-09595 at 2 (App. Bd. Feb. 3, 2012).

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.

Applicant objects to the Judge's concern regarding his wife's employment status. Given the financial basis for the Government's security concerns, it is reasonable for the Judge to consider the circumstances of Applicant's family employment potential and the reasons for any unemployment within the household. Such considerations may be appropriate in analyzing either disqualifying conditions or mitigating conditions.

Applicant argues that the Judge erroneously based his decision on the mere failure of his business venture. A review of the decision and the record indicates that the choices Applicant made and the *manner* in which he went about assuming the risk of quitting his job and starting his own business figured heavily in the Judge's analysis. The Judge made sustainable findings that Applicant was unprepared to pursue his own business, did not have a solid business plan, has not attempted to address his delinquent debts, and has no reasonable future prospects for setting his financial house in order. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were the result of poor judgment, were still ongoing, and were unmitigated.

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 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