

KEYWORD: Guideline F

DIGEST: Applicant's appeal relies heavily on new evidence which the Board cannot consider.  
Adverse decision affirmed.

CASENO: 14-02048.a1

DATE: 06/12/2015

DATE: June 12, 2015

In Re:	)	
	)	
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	)	ISCR Case No. 14-02048
	)	
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 July 3, 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 that the case be decided on the written record. On March 20, 2015, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert E. Coacher 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 46 years old. He previously filed a Chapter 13 bankruptcy, but the case was dismissed in 2009. He currently has seven delinquent debts totaling \$16,207. Applicant failed to file and pay his federal income taxes for years 2009 through 2012. He owes approximately \$55,000 in delinquent taxes. While serving in the Army in 2004, Applicant had financial issues that caused the issuance of a “warning notice.” The Army granted his security clearance with a warning that subsequent unfavorable information could lead to a suspension of the clearance.

Concerning his numerous non-tax debts, Applicant claims variously that he is either paying the debt, the debt has been paid, or he is seeking payment arrangements with the debtor. He failed to offer documentary proof of these assertions; therefore the debts are considered unresolved. Applicant provided documentary evidence that he filed his federal taxes for years 2009 through 2013 sometime in 2014. He established that he has entered into an agreement with the IRS to pay \$500 monthly on his tax debt. He showed that he made one \$500 payment in January 2015. Despite this payment, Applicant’s tax balance went up rather than down because of penalty and interest charges. He did not provide any information about his current financial status or a budget. There is no evidence that he sought financial counseling.

Applicant explained that his financial difficulties arose after his wife was severely injured in an accident in 2006 and could no longer work. With only one income, he got behind on his bills. He sought Chapter 13 bankruptcy protection, but reached the point where he could no longer make payments under the plan. Applicant’s explanation for not filing his federal taxes for years 2009 to 2012 is that he and his wife cannot discuss the issue without arguing and therefore nothing was done about the taxes.

The Judge reached the following conclusions: Applicant’s debts are recent and remained unresolved. He did not provide sufficient evidence to show that the debts are unlikely to recur. He provided evidence that his wife’s accident contributed to his financial problems. However, he failed to present sufficient evidence of responsible behavior in the face of that hardship. He presented no evidence of financial counseling. He has addressed his tax filings, but he still owes \$55,000 in back taxes and his recent payment plan is not reducing the balance. There is no clear evidence that

Applicant's financial problems are being resolved, or are under control. Without a track record of financial stability, Applicant has failed to mitigate the security concerns arising under Guideline F.

Applicant argues that the Judge's decision was inaccurate, and lists numerous efforts he has made to resolve his delinquent indebtedness. Applicant's assertions do not establish error on the part of the Judge.

Applicant's appeal representations rely heavily on documentary evidence he submitted with his appeal, that was not made part of the record below. The Board cannot consider new evidence on appeal. See Directive ¶ E3.1.29.

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). In this case, the Judge made sustainable findings that Applicant had a lengthy history of not meeting financial obligations. He noted that at the time of the hearing, Applicant still had a significant amount of overdue indebtedness, including outstanding tax delinquencies. In light of the foregoing, 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). A review of the Judge's decision reveals that, regarding Guideline F, the Judge listed the potentially applicable mitigating conditions and then discussed several components of those factors in his analysis. The Judge offered a detailed and reasonable explanation as to why the disqualifying conduct under Guideline F was not fully mitigated.

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