KEYWORD: Guideline F

DIGEST: The hearing was the Applicant's opportunity to produce evidence to rebutt, explain, or mitigate facts proven by Department Counsel. The Judge then had to consider all the evidence in the case. Any attempt on the part of the Judge to investigate allegations would conflict with the Judge's role as an impartial fact finder. The Judge advised Applicant of the obligations and limitations of their respective roles.

CASENO: 14-03991.a1

DATE: 07/17/2015

DATE: July 17, 2015

In Re:	)	
	)	
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	)	
	)	
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 October 11, 2014, 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 requested a hearing. On April 29, 2015, after the hearing, Defense Office of Hearings and Appeals Administrative Judge Michael H. Leonard denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse clearance decision is arbitrary, capricious or contrary to law.

Applicant contends that the Judge's adverse decision should be reversed because: 1) the statue of limitations had expired on his debts and they were uncollectible, and 2) the Judge did not question him extensively enough about his attempts to settle his debts with the collection agencies. As part of his presentation, Applicant makes statements about his efforts to settle his debts. The Board cannot consider new evidence on appeal. *See* Directive ¶ E3.1.29.

"[T]here is a strong presumption against granting a security clearance." *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied* 499 U.S. 905 (1991). Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. The presence of some mitigating evidence does not alone compel the Judge to make a favorable clearance decision. 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*. An applicant'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. 08-03771 at 2 (App. Bd. Feb. 18, 2009).

Security clearance decisions are not controlled or limited by statutes of limitation. A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. Accordingly, even if a delinquent debt is legally unenforceable under state law, the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner. *See, e.g.,* ISCR Case No. 07-09966 at 3 (App. Bd. Jun. 25, 2008). The Board finds no error with respect to the Judge's treatment of the statute of limitations.

The hearing was the Applicant's opportunity to produce other evidence beyond that developed by his background investigation for the purpose of rebutting, explaining, extenuating, or mitigating facts to which he has admitted or which have been proven by Department Counsel. *See, e.g.*, Directive ¶ E3.1.15. The Judge was then duty bound to consider all of the evidence developed on the record of the case before him. Any attempt on the part of the judge to investigate independently allegations or develop facts would, of course, conflict with the judge's role as an impartial fact finder. *See, e.g.*, ISCR Case No. 06-09462 at 2 (App. Bd. Jul. 19, 2007). In this case

the Judge specifically advised Applicant of the obligations and limitations of their respective roles. Tr. at 17. Furthermore, Department Counsel asked Applicant ". . . if you knew that the statute of limitations is not a defense in these hearings, what would you do?" Applicant responded: "There's not much I can do, you know." Tr. at 47. Accordingly, the Board finds no error as to the Judge's questioning of the Applicant.

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. After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his decision. "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 unfavorable security clearance decision under is sustainable.

Order

The decision of the Judge is AFFIRMED.

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

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

Signed; William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board