

KEYWORD: Guideline F

DIGEST: The Appeal Board cannot consider new evidence on appeal. An ability to argue for an alternative interpretation of the evidence is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASE NO: 14-06206

DATE: 05/03/2016

DATE: May 3, 2016

In Re:)	
)	
-----)	ISCR Case No. 14-06206
)	
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 May 11, 2015, 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 15, 2016, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert Robinson Gales 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: Several of Applicant's credit accounts were delinquent as far back as 2007. Other delinquencies occurred over the ensuing years. Applicant contends that his real financial problems began in 2012. Applicant worked overseas in 2010 and no income tax was withheld from his earnings. He sustained an injury while on that job in April 2012, and was placed on unpaid medical leave. This status continued until he left the job in October 2012. He was unemployed for the next fourteen months but he was ineligible for unemployment compensation. Without this benefit and with no other income, Applicant used his savings to survive. Accounts became delinquent and income taxes remained unpaid. When he obtained new employment in 2013, he earned 40 percent less than a prior salary. He sought an MBA degree in an attempt to increase his income and pay off his debts.

The SOR identified two purportedly delinquent accounts with the IRS totaling approximately \$35,000. Applicant failed to submit any documentation to support his contention that tax refunds were applied to the debts, and that he had entered into a repayment installment agreement with the IRS. There is no documentary evidence to support a finding that the accounts are in the process of being resolved. Additionally, Applicant owes the U.S. Department of the Treasury a past-due balance of \$833 on an unspecified account. Applicant claimed to have no knowledge of the account. There is no evidence of any effort by Applicant to resolve the debt.

Applicant failed to furnish a personal financial statement setting forth his net monthly income, his expenses, and his debt payments. Thus, it is nearly impossible to determine if his finances are under control. There is no evidence that Applicant ever sought the services of a financial advisor, or that Applicant ever received financial counseling.

The Judge reached the following conclusions: Applicant has had a longstanding problem with his finances which started as early as 2007, but which became a substantial income tax problem in 2012. He owes the IRS \$34,000 for tax years 2010, 2011, and 2012, and has ignored another debt to the Government for \$833. Applicant's description of why, and under what authority, he failed to routinely pay his federal income taxes for three years is superficial at best. He, himself, made the decision to become unemployed when he quit his job in 2012. Applicant failed to demonstrate what actions he had taken to address his delinquent income taxes other than to claim that he has an installment plan with the IRS. There is no evidence to indicate that he ever received financial counseling. In the absence of documentation, it is impossible to determine the current state of his financial affairs. Applicant has not acted responsibly by failing to address his delinquent accounts while employed and by failing to make limited, if any, efforts of working with his creditors. Applicant's actions, under the circumstances confronting him, cast doubt on his current reliability, trustworthiness, and good judgment.

Applicant's appeal submission includes assertions and documents that were not part of the record below. The Board cannot consider new evidence on appeal. Directive, ¶ E3.1.29.

Applicant states that any difficulties he has had with his finances in the past were due to periods of unemployment and not the result of living outside his means. He asserts that there is no issue of lack of responsibility on his part. The Board construes these arguments as Applicant's argument that there were mitigating factors in the case that supported a favorable clearance decision.

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.

In this case, the Judge made sustainable findings that Applicant had a history of not meeting financial obligations, principally the failure to pay income taxes for a period of three years. The Judge noted Applicant's assertions that the tax debts were being addressed, but also noted that Applicant had provided no corroborating evidence for his assertions, nor did he provide sufficient details about his overall financial profile which would afford an accurate assessment of his ability to resolve the debts. In light of this, 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. 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*. After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the 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 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 F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board