

KEYWORD: Guideline F

DIGEST: The Judge found Applicant had 14 delinquent debts, including judgments, collection accounts and medical accounts totaling approximately \$32,000. In reaching her adverse decision, she specifically considered the “extremely negative circumstances” Applicant referenced in his Appeal Brief including his contentious divorce, multiple illnesses, period of unemployment and homelessness. Adverse decision affirmed.

CASE NO: 15-00650.a1

DATE: 06/27/2016

DATE: June 27, 2016

_____)	
In Re:)	
)	
-----)	ISCR Case No. 15-00650
)	
)	
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 August 8, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On April 11, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch denied Applicant’s request for a security clearance.¹ Applicant 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 argues that in reaching her adverse decision under Guideline F, the Judge “only looked at the money that [he] made over a period of time and the debt but not the extremely negative circumstance that [he] had to deal with.” Applicant’s argument does not demonstrate that the Judge’s decision is arbitrary, capricious or contrary to law.

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 security 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*. 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).

The Judge found Applicant had 14 delinquent debts, including judgments, collection accounts and medical accounts totaling approximately \$32,000. In reaching her adverse decision, she specifically considered the “extremely negative circumstances” Applicant referenced in his Appeal Brief including his contentious divorce, multiple illnesses, period of unemployment and homelessness. Decision at 2, 5-7. However, she noted that “he has not provided any documentation that he has resolved his debts or even has the means to do so.” *Id.* at 6.

In this case, the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying circumstances and considered the possible application of relevant conditions and factors. She reasonably explained why the mitigating evidence was insufficient to overcome the government’s security concerns. Decision at 5-7. 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

¹The Judge found for Applicant under Guideline E. That finding is not at issue on appeal.

that the Judge examined the relevant data and articulated a satisfactory explanation for his 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 decision is sustainable.

Order

The decision is AFFIRMED.

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board

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