

KEYWORD: Guideline F

DIGEST: 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. Adverse decision affirmed.

CASENO: 15-02692.a1

DATE: 10/26/2016

DATE: October 26, 2016

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-02692
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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 January 16, 2016, 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 August 23, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein 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 the Judge’s adverse decision should be reversed because he has done his best to pay down his past debts, his credit score is rising, and he has recently been qualified for a new home loan. In support of that argument he includes new evidence as to recent efforts to resolve specific debts which the Board cannot consider on appeal. Directive ¶ E3.1.29. Applicant’s argument does not demonstrate that the Judge’s decision is arbitrary, capricious or contrary to law. Applicant also challenges the Judge’s finding that he had not filed tax returns for 2007 and 2008 and other returns were not filed in a timely fashion. The Judge’s findings are sustainable.

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. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

The Judge found Applicant had failed to file his Federal and state income tax returns for tax years 2007 through 2012 and had presented insufficient evidence that those returns had been subsequently filed. She also found that Applicant had over \$4,000 in delinquent debt. In her decision, the Judge noted that Applicant had attributed his failure to file his tax returns to “irresponsible” behavior. Decision at 2-3.

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 found in favor of Applicant with respect to two of the SOR allegations but reasonably explained why the mitigating evidence was insufficient to overcome the government’s security concerns. Decision at 6-7. The Board does not review a case *de novo*. The favorable evidence cited

¹The Judge’s favorable findings as to SOR paragraphs 1.c and 1.e are not at issue on appeal.

by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. "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: 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