

KEYWORD: Guideline F

DIGEST: An applicant's need for a security clearance to his job is not material to the evaluation of his security suitability. Adverse decision affirmed.

CASENO: 06-00799.a1

DATE: 04/16/2007

DATE: April 16, 2007

In Re:)	
)	
)	
-----)	ISCR Case No. 06-00799
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On April 14, 2006, 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 October 19, 2006, after the hearing, Administrative Judge Joan Caton Anthony 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 unfavorable clearance decision under Guideline F is arbitrary, capricious, or contrary to law.

Applicant argues that the Judge should have concluded that the security concerns raised by his history of financial difficulties were mitigated because his financial problems were largely the result of circumstances beyond his control—a period of underemployment—and he has received counseling, established a repayment plan, begun to repay the debts, and maintained consistent employment. In support of his argument, Applicant essentially reargues his case with respect to the evidence he presented below and provides additional explanations as to what efforts he has taken to resolve his remaining outstanding debts. Applicant also argues that an adverse clearance decision could possibly jeopardize his current employment and his future employment possibilities. Applicant's arguments do not demonstrate that the Judge erred.

(1) An applicant's need for a security clearance to keep his job is not material to the evaluation of his security suitability. The possibility that an unfavorable clearance decision could have adverse consequences for an applicant's job situation is not relevant or material to an evaluation of the security significance of that applicant's situation. *See, e.g.*, ISCR Case No. 01-21070 at 4 (App. Bd. Dec. 7, 2004). The security significance of Applicant's history of financial difficulties is not diminished or reduced by the fact that an unfavorable security clearance decision could result in the loss of his job.

(2) The Board may not consider new evidence on appeal. *See* Directive ¶ E3.1.29. Accordingly, we may not consider Applicant's additional explanations, and they do not demonstrate error on the part of the Judge.

(3) The application of disqualifying and mitigating conditions does not turn simply on a finding that one or more of them apply to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole. *See, e.g.*, ISCR Case No. 01-14740 at 7 (App. Bd. Jan.15, 2003). Thus, 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*. 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 that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law.

The Applicant has not met his burden of demonstrating that the Judge erred in concluding that the financial considerations allegations had not been mitigated. Although Applicant strongly disagrees with the Judge's conclusions, he has not established that those conclusions are arbitrary, capricious, or contrary to law. *See* Directive ¶ E3.1.32.3.

In this case, the Judge found that Applicant had a history of not meeting financial obligations which extended over many years. At the time the case was submitted for decision he still had significant outstanding debts and had only recently begun to repay his debts. In light of the

foregoing, the Judge could reasonably conclude that Applicant's financial problems were recent, not isolated, and still ongoing. The favorable record 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. 02-28041 at 4 (App. Bd. June 29, 2005). The Board does not review a case *de novo*. Given the record that was before her, the Judge's ultimate unfavorable clearance decision under Guideline F is sustainable. Thus, the Judge did not err in denying Applicant a clearance.

Order

The decision of the Judge denying Applicant a clearance is AFFIRMED.

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

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

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