

KEYWORD: Guideline F

DIGEST: After the government presents evidence raising a security concern the burden shift to the applicant to establish mitigation. Adverse decision affirmed.

CASENO: 06-24093.a1

DATE: 10/16/2008

DATE: October 16, 2008

)	
In Re:)	
-----)	ISCR Case No. 06-24093
)	
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 February 25, 2008, 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 June 26, 2008, after the hearing, Administrative Judge John Grattan Metz, Jr. 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's adverse decision should be reversed because Applicant has acknowledged he "made bad judgments about the handling of [his] taxes" and he is working to resolve his financial problems. Given the totality of the record evidence, Applicant's arguments do not demonstrate that the Judge's decision is arbitrary, capricious, or contrary to law.

Once there has been a concern articulated regarding an applicant's security eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. 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." *See, e.g.*, ISCR Case No. 05-02833 at 2 (App. Bd. Mar. 19, 2007). "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. 05-03143 at 3 (App. Bd. Dec. 20, 2006).

Applicant has not met his burden of demonstrating that the Judge erred in concluding that the Guideline F 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 serious history of not meeting financial obligations. At the time the case was submitted for decision, he still had significant outstanding tax debts¹ and was still in the process of trying to resolve his financial problems. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were recent and still ongoing. The favorable record evidence cited by Applicant is not sufficient to demonstrate the

¹Applicant had twelve delinquent debts totaling approximately \$37,000. Over \$34,000 of the debt was for unpaid taxes to the IRS for tax years 2001 through 2004 and to his home state. He potentially owed an additional \$5,000 to the IRS for tax years 2005 through 2007. Applicant claimed to have paid or settled seven debts for \$1,800 in March 2008, but provided no corroboration that he had done so.

Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 02-28041 at 4 (App. Bd. Jun. 29, 2005). 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 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)). Therefore, the Judge's ultimate unfavorable security clearance decision under Guideline F is sustainable.

Order

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

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

Signed: Michael D. Hipple

Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board