

KEYWORD: Guideline F

DIGEST: The Judge found that Applicant had 18 delinquent debts. At the time of the hearing the debts had not been discharged. The Judge could reasonably conclude Applicant's financial problems were ongoing. Adverse decision affirmed.

CASENO: 07-08398.a1

DATE: 06/19/2008

DATE: June 19, 2008

In Re:)	
)	
-----)	ISCR Case No. 07-08398
)	
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 November 21, 2007, 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 March 12, 2008, after the hearing, Administrative Judge Edward W. Loughran 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 failure to mitigate the Guideline F security concerns is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

Applicant argues that the Judge’s adverse decision should be reversed because the Judge did not give sufficient weight to Applicant’s mitigating evidence which he contends showed that the outstanding debts were old, that he had taken reasonable steps to resolve his financial problems, and that he has outstanding character references. Applicant’s arguments do not demonstrate that the Judge erred.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. 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*. See, e.g., ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). 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. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In this case, the Judge found that Applicant had 18 delinquent debts totaling approximately \$33,509, none of which had been paid. He had completed mandatory credit counseling in November 2007, in anticipation of a bankruptcy, and had filed for Chapter 7 bankruptcy later that same month. Applicant’s bankruptcy petition reflected three repossessed cars, although Applicant testified that he believed there had actually been four voluntarily repossessed cars. At the time of the hearing, Applicant’s debts had not yet been discharged. Decision at 3. In light of the foregoing, the Judge could reasonably conclude that Applicant’s financial problems were still ongoing. See, e.g., ISCR Case No. 06-23894 at 2 (App. Bd. Mar. 6, 2008).

The Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct and considered the possible application of relevant mitigating conditions. He gave Applicant partial credit under the relevant mitigating conditions. However, he reasonably explained why the evidence which Applicant had presented in mitigation was insufficient to overcome the government’s security concerns. The Board does not review a case *de novo*. 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. 06-11172 at

2 (App. Bd. Sep. 4, 2007). Given the record that was before him, 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: 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