

KEYWORD: Guideline F

DIGEST: An applicant with good or exemplary job performance may still engage in conduct with negative security implications. A whole-person analysis is not confined to the workplace. Adverse decision affirmed.

CASENO: 07-08326.a1

DATE: 05/28/2008

DATE: May 28, 2008

_____	)	
In Re:	)	
	)	
-----	)	ISCR Case No. 07-08326
	)	
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 October 10, 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 February 28, 2008, after the hearing, Administrative Judge Marc E. Curry 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 adverse clearance decision 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 excellent employment record, and the fact that he had been a dependable, trustworthy employee who had always followed the applicable security rules. Applicant’s argument does not demonstrate that the Judge erred.

An applicant with good or exemplary job performance may engage in conduct that has negative security implications. *See, e.g.*, ISCR Case No. 99-0123 at 3 (App. Bd. Jan. 11, 2000). The Directive's Guidelines set forth a variety of examples of off-duty conduct and circumstances which are of security concern to the government and mandate a whole-person analysis to determine an applicant's security eligibility. A whole-person analysis is not confined to the workplace. *See* ISCR Case No. 03-11231 at 3 (App. Bd. Jun. 4, 2004).

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*. 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. 06-11172 at 2 (App. Bd. Sep. 4, 2007).

In this case, the Judge found that Applicant had a lengthy and serious history of not meeting financial obligations. At the time of the hearing, Applicant still had significant delinquent debts and was still in the process of resolving his financial problems. In light of the foregoing, the Judge could reasonably conclude that Applicant’s financial problems were still ongoing. *See, e.g.*, ISCR Case No. 05-07747 at 2 (App. Bd. Jul. 3, 2007).

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 and whole-person factors. 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). 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)). Accordingly, 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: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

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