

KEYWORD: Guideline E; Guideline F

DIGEST: Judge's conclusion that Applicant's efforts at debt repayment had not made much of a dent in her overall past-due indebtedness and that she was likely to experience additional financial difficulties was reasonably supported by the record evidence. Adverse decision affirmed.

CASENO: 07-09815.a1

DATE: 01/30/2009

DATE: January 30, 2009

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In Re: )	
)	
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)	
)	
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 March 7, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested the case be decided upon the written record. On November 24, 2008, after considering the record, Administrative Judge Joseph Testan denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge erred by not applying Guideline F mitigating factors in her favor.<sup>1</sup> For the following reasons, the Board affirms the Judge’s unfavorable decision.

Applicant offers new evidence in the form of factual assertions that are not found in the record below.<sup>2</sup> The Board cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant argues that despite her earlier financial irresponsibility, she has been making an honest attempt to correct the situation and repay her debts. She states that she has both the willingness and the ability to satisfy her debts and because of this, the Judge’s unfavorable decision should be reversed. Applicant has not demonstrated that the Judge has committed error.

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 weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. He concluded that Guideline F Mitigating Condition 20.d.<sup>3</sup> applied to the case, but reasonably explained why the applicability of that factor was of insufficient strength to overcome the government’s security concerns. Specifically, the Judge concluded that, given all of the circumstances indicated by the record, that Applicant’s efforts at repayment had not made much of a dent in her overall past-due indebtedness and that she was likely to experience additional

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<sup>1</sup>The Judge found in favor of Applicant regarding Guideline E. That portion of the case is not at issue on appeal.

<sup>2</sup>The principal assertion being that Applicant has cut her debt load in half in the period of a year after she employed the aid of a debt consolidation service. There is no support for this assertion in the written record.

<sup>3</sup>[T]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

financial difficulties as she continues to address her past-due indebtedness. This conclusion is reasonably supported by the record evidence. The Board does not review a case *de novo*. The favorable 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 3 (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)). "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 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