

KEYWORD: Guideline F

DIGEST: Given the lack of documentation regarding his finances, Applicant's claims that he had paid certain debts cannot be accepted. Adverse decision affirmed.

CASENO: 07-10310.a1

DATE: 07/30/2008

DATE: July 30, 2008

<p>In Re: _____</p> <p>Applicant for Security Clearance</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>ISCR Case No. 07-10310</p>
---	---	-------------------------------

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 7, 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 that the case be decided on the written record. On April 22, 2008, after considering the record, Administrative Judge Michael H. Leonard 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.

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 he had paid off most of his outstanding debts by the time the case was submitted for decision. As part of his argument, Applicant also contends that the credit reports offered as evidence by the government were not current and were not indicative of his current financial status. Applicant’s arguments do not demonstrate that the Judge erred.

Applicant elected to have a decision based on the written record. He filed a short response to the government’s file of relevant material (FORM), which included a more recent credit report. Applicant’s response, however, did not object to the credit reports contained in the government’s FORM, and the Judge specifically considered the more recent credit report submitted by Applicant in reaching his decision. Decision at 2-3. The Judge based his adverse findings, in substantial part, on the fact that Applicant had submitted no “proof-of-payment” paperwork as to individual debts, such as account statements or cancelled checks, and “no evidence showing the value of any financial assets or investments.” *Id.* at 3-4. He then went on to conclude that: “Given the lack of documentation in this case, [Applicant’s] claims, representations, and estimations cannot be accepted as facts that a reasonable person might accept as reliable evidence.” *Id.* at 6. The Board has previously noted that it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of individual debts. *See, e.g.*, ISCR Case No. 06-17520 at 2 (App. Bd. Sep. 20, 2007).

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. 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 a lengthy history of not meeting financial obligations. Applicant offered little in the way of mitigating evidence and, at the time the case was

submitted for decision, he was still in the process of trying to resolve his financial problems. The Judge weighed the limited mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. 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 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 D. Hipple

Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board