

KEYWORD: Guideline F

DIGEST: The Board does not consider new evidence on appeal. A party's disagreement with the Judge's weighing of the evidence is not sufficient to demonstrate error. Adverse decision affirmed.

CASENO: 07-12203.a1

DATE: 12/05/2008

DATE: December 5, 2008

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In Re:	)	
	)	
-----	)	ISCR Case No. 07-12203
	)	
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 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 September 25, 2008, after the hearing, Administrative Judge Carol G. Ricciardello 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 should have found his financial difficulties to be mitigated. Finding no error, we affirm.

The Judge made the following factual findings: Of the SOR allegations of debt, Applicant admitted five and denied the others with explanations. Applicant owes child support for a child from a prior marriage, and he fell behind while in school and while unemployed or underemployed. Applicant pays the current support and some of the arrearage by garnishment. The money is collected by the child support agency of one state and then transferred to the appropriate agency in another state. Applicant was unable to state the current amount of his arrearage because he had not contacted the offices in either state in the past year to determine the amount of the arrearage. At times, two of Applicant’s other debts are collected by garnishment, but Applicant was unable to state the current balance on the debts.<sup>1</sup> Applicant has taken no action to pay his other debts. However, Applicant testified that he recently filed for Chapter 7 bankruptcy, and his mother loaned him the money to hire a lawyer to file the paperwork. Applicant’s wife quit work to have a baby shortly before the hearing. Without her income, it appears that their expenses exceed their income. Applicant’s wife is seeking employment again.

Applicant’s appeal restates his testimony as to why his financial difficulties should be considered mitigated, because they occurred a long time ago and for reasons beyond Applicant’s control. On appeal, the information regarding mitigation is stated in greater detail than it was at the hearing. Applicant also explains that his bankruptcy is proceeding. The Board cannot consider any new information in Applicant’s appeal, because the Directive does not allow the Board to consider new evidence. *See* Directive ¶ E3.1.29.

Applicant argues that he has mitigated any security concerns that might exist under Guideline F and that the Judge did not give adequate weight to his evidence of mitigation. Applicant admitted five of the SOR allegations against him. The burden then shifted to Applicant to extenuate or mitigate the security concerns raised by the SOR allegations. The Judge concluded that Applicant did not present evidence sufficient to overcome the security concerns raised. She concluded that the debts were recent since they remained unpaid at the time of the hearing, and she concluded that while school and periods of unemployment contributed to the debt delinquencies, Applicant did not act reasonably inasmuch as he virtually ignored his debts.

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. Thus, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security determination. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable

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<sup>1</sup>Applicant testified that only 25 percent of his pay can be collected by garnishment. Most of the 25 percent is collected for child support. Only one of the other debts can be collected at a time, and only a small amount can be taken.

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 error on the part of the Judge. *See, e.g.* ISCR Case No. 07-18303 at 2-3 (App. Bd. Nov. 13, 2008). After a review of the record, the Board concludes that the Judge's findings and conclusions are reasonably supported by the record. Thus, the Judge's decision is sustainable.

### **Order**

The Judge's decision denying Applicant a security clearance is AFFIRMED.

Signed: Jeffrey D. Billett  
Jeffrey D. Billett  
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