

KEYWORD: Guideline F; Guideline E

DIGEST: A party's disagreement with the judge's weighing of the evidence is not sufficient to demonstrate that the Judge erred. Adverse decision affirmed.

CASENO: 07-18216.a1

DATE: 03/09/2011

DATE: March 9, 2011

In Re:)	
)	
-----)	ISCR Case No. 07-18216
)	
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 July 7, 2010, DOHA issued a statement of reasons (SOR) advising Applicant of the

basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 13, 2010, after the hearing, Administrative Judge Joan Caton Anthony denied Applicant’s request for a security clearance. Applicant 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 seeks reversal of the Judge’s adverse decision arguing that the record evidence shows that he is not financially overextended. As part of his submission on appeal, he includes copies of several of the exhibits admitted into the record at the hearing as well as a detailed explanation of his financial circumstances. Applicant’s presentation does not demonstrate that the Judge’s decision is arbitrary, capricious or contrary to law.

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*. A party’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. 09-04354 at 2 (App. Bd. Oct. 29, 2010).

In this case, the Judge found against Applicant under Guideline F as to three significant debts—a loan account relating to an automobile that had been repossessed and two mortgages on property that had been foreclosed upon. On the day of the hearing, Applicant had reached an agreement with the creditor to begin payment of the delinquent auto loan account, but had not yet made any payments in furtherance thereof. Moreover, he still owed a deficiency of approximately \$100,000 which occurred when he failed to make payments on two mortgages, and the property securing the mortgages was foreclosed on and sold in 2007. In reaching her adverse decision, the Judge noted that Applicant’s unresolved financial delinquencies did not appear to be the result of a situation beyond his control, and he appeared to possess sufficient assets to satisfy his creditors. Decision at 9. In light of the foregoing, the Judge could reasonably conclude that Applicant’s financial problems were still ongoing.

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 conditions and factors. She found in favor of Applicant under Guideline E and with respect to two of the SOR factual allegations under Guideline F, but reasonably explained why the mitigating evidence was insufficient to overcome all of the government’s security concerns.

The Board does not review a case *de novo*. After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for her 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 unfavorable security clearance decision 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
Chairperson, Appeal Board

Signed: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, Appeal Board

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