

KEYWORD: Guideline F

DIGEST: The Judge’s conclusion that Applicant was capable of doing more to resolve her delinquent debts and did not act responsibly under the circumstances is supported by the record evidence. Adverse decision affirmed.

CASENO: 08-03221.a1

DATE: 02/25/2009

DATE: February 25, 2009

In Re:)	
)	
-----)	ISCR Case No. 08-03221
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Greg T. Rinckey, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 13, 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 October 29, 2008, after the hearing, Administrative Judge Erin C. Hogan 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 issues on appeal: whether the government met its burden of

establishing disqualifying conditions; and whether, in the alternative, Applicant established her case in mitigation of the Guideline F security concerns. For the following reasons, the Board affirms the Judge's unfavorable decision.

Applicant asserts that the government did not provide substantial evidence that Applicant is financially overextended. Applicant states that Department Counsel did not call any witnesses or introduce any statements by government employees regarding the bases for the SOR. Applicant further asserts that the documentary evidence introduced is either outdated or supports Applicant's position.

The fact that Department Counsel did not call witnesses or place the statements of government employees on the record is not dispositive of the issue of the sufficiency of the government's proof. The government relied on Applicant's answer to the SOR, Applicant's answers to interrogatories and two credit reports to establish its case. After a review of the record evidence, the Board is satisfied that the government met its burden of production with regard to the security concerns stated in the SOR.

Applicant argues that despite her inability to retire all her delinquent debts, she has been making an honest attempt to correct the situation and repay her debts. She states that she has been able to retire a number of her outstanding debts notwithstanding the difficulties presented by her late husband's illnesses and her own medical problems. Applicant argues that because of these factors 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. She concluded that Guideline F Mitigating Condition 20.b.¹ applied to the case, acknowledging that Applicant's husband's illness² and her own health issues contributed to her financial situation. The Judge also recognized that Applicant is making some efforts to repay her debts. However, the Judge reasonably explained why the applicability of that factor was of

¹[T]he conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.

²The Judge also found, based on Applicant's testimony about her husband's debts: "Most of the medical debts were written off due to a public health policy of the state where they were living." Decision at 3.

insufficient strength to overcome the government's security concerns. Specifically, the Judge noted that Applicant has a good paying job and elects to contribute to her 401(k) account to the detriment of her ability to retire her substantial delinquent student loan debt, which has been outstanding for more than 12 years. The Judge's conclusion that Applicant was capable of doing more to resolve her delinquent accounts and did not act responsibly under the circumstances is supported by the record evidence. The Judge's conclusion that not enough time has passed to establish that Applicant will make good on all her outstanding debt is also supported by the record.

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 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 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