

KEYWORD: Guideline F

DIGEST: The Board does not have the authority to grant Applicant's request for an opportunity to submit new evidence. Adverse decision affirmed.

CASENO: 08-04023.a1

DATE: 04/03/2009

DATE: April 3, 3009

In Re:)
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 -----) ISCR Case No. 08-04023
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)
 Applicant for Security Clearance)
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)

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 August 21, 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 January 30, 2009, after the hearing, Administrative Judge Matthew E. Malone denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge erred in his conclusion that Applicant had not mitigated his Guideline F security concerns. Finding no error, we affirm.

The Judge found that Applicant has numerous delinquent debts, in excess of \$11,000. He has been employed steadily since 2001, although his fiancé, with whom he lives, has experienced job layoffs in the recent past. Applicant and his fiancé have over \$700 left over each month after expenses. In the Conclusions section of his decision, the Judge noted that Applicant is aware of his financial problems and has the apparent means to remedy them. However, Applicant has not demonstrated that he will actually do so. The Judge noted that Applicant’s debts are recent and that, despite his fiancé’s unemployment, they did not result from causes beyond Applicant’s control. “[T]here is insufficient information for me to conclude that Applicant has satisfied the doubts about his suitability for a clearance raised by his debts.” Decision at 5.

Applicant has requested an opportunity to submit new matters not contained in the record. The Board has no authority to grant that request. See Directive ¶ E3.1.29. (“No new evidence shall be received or considered by the Appeal Board”). See also ISCR Case No. 08-06518 at 2 (App. Bd. Mar. 3, 2009). Applicant expressed disagreement with the manner in which the Judge weighed the evidence, e. g., an exhibit showing a debt repayment plan. However, 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. 06-17409 at 3 (App. Bd. Oct. 12, 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 Judge’s decision that “it is not clearly consistent with the national interest to continue Applicant’s eligibility for a security clearance” is sustainable on this record. Decision at 6. See also *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security’”).

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board