

KEYWORD: Guideline F

DIGEST: At the time the case was submitted for decision, Applicant admitted owing \$31,000 on 42 past due or delinquent debts. The Judge could reasonably conclude that Applicant's financial problems were ongoing. Adverse decision affirmed.

CASENO: 08-03946.a1

DATE: 12/19/2008

DATE: December 19, 2008

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In Re:	)	
	)	
-----	)	ISCR Case No. 08-03946
	)	
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 May 23, 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 August 26, 2008, after the hearing, Administrative Judge Claude R. Heiny denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.<sup>1</sup>

Applicant raised the following issue on appeal: whether the Judge’s adverse clearance decision is arbitrary, capricious or contrary to law.

Applicant asks that the Judge’s adverse decision be reversed, asserting that her financial problems were the result of circumstances beyond her control and that she is in the process of resolving those problems. Applicant has not demonstrated the Judge erred.

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. At the time the case was submitted for decision, Applicant admitted owing approximately \$31,000 on 42 past due or delinquent accounts, and was still in the process of trying to resolve her financial problems.<sup>2</sup> In light of the foregoing, the Judge could reasonably conclude that those problems were still ongoing. See, e.g., ISCR Case No. 05-07747 at 2 (App. Bd. Jul. 3, 2007). 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. He reasonably explained why the mitigating evidence was insufficient to overcome the government’s security concerns. 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

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<sup>1</sup>The Judge’s favorable finding as to SOR paragraph 1(jj) is not at issue on appeal.

<sup>2</sup>In that regard, the Judge noted the following: “In November 2007, she started looking for a financial management company to assist her with her finances and found one in June 2008. (Tr. 40) Applicant agreed to pay the . . . company \$1,000 per month with the first payment due July 15, 2008. [However, Applicant] postponed the first payment when her car was involved in an accident requiring [a] \$2,000 repair. (Tr. 19) She provided no documentation showing payment on August 15, 2008. She is currently waiting for statements from [some of] her . . . creditors to add to the repayment schedule. There is no documentation as to which debts are covered by the repayment agreement.” Decision at 3-4.

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

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