

KEYWORD: Guideline F; Guideline J

DIGEST: The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance determination. The Board has no authority to grant Applicant's request to postpone his security clearance process until he has resolved his financial difficulties.

CASENO: 08-05069.a1

DATE: 02/20/2009

DATE: February 20, 2009

In Re:	)	
	)	
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	)	
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 24, 2008, 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 J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended (Directive). Applicant requested a hearing. On December 15, 2008, after the hearing, Administrative Judge Arthur E. Marshall, Jr. 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’s adverse security clearance decision under Guideline F is arbitrary, capricious, or contrary to law.<sup>1</sup>

Specifically, Applicant restates the reasons for his financial situation and his efforts to improve it. Applicant contends that the Judge should have found that his financial situation was mitigated. In the alternative, Applicant requests that a decision on his security request be postponed until he is able to improve his financial situation to allow a favorable security clearance decision. Finding no error, we affirm the Judge’s decision.

The Judge made the following relevant findings of fact under Guideline F: In 2002, Applicant’s estranged wife charged about \$15,000 on Applicant’s credit card without Applicant’s knowledge. Applicant quit his job for personal reasons in the spring of 2005 and was without full-time employment until the middle of 2006. In the meantime, Applicant undertook a series of “side jobs” to cover daily expenses and child support, but did not have the means to pay older debts. More obligations became delinquent. Applicant filed for bankruptcy in 2006, but withdrew the petition on the advice of his mother and friends. Applicant began a six-month job in mid-2006. Applicant accepted a government position in February 2007, although difficulty in obtaining a security clearance caused a change in his position. Applicant continued to work for the government until January 2008. At that time, Applicant resigned his government job to accept a position in a private company after he was erroneously assured that he had been granted a security clearance. Applicant was still unemployed at the time of the hearing, but had job offers pending the outcome of the security clearance process.

Applicant has paid off one of the debts listed in the SOR in the amount of \$660. He does not believe one of the debts is his, but has not demonstrated that he disputed that debt to the appropriate authorities. Except for the \$660 debt, Applicant’s debts remain substantially unpaid or unaddressed. Applicant indicates that he has contacted a debt consolidation firm. They will act on his behalf to file for bankruptcy for him after he pays their service fee of \$1,551.

Applicant contends that the Judge’s adverse decision should be reversed because the Judge did not give sufficient weight to Applicant’s mitigating evidence. Applicant has not demonstrated that the Judge’s decision is arbitrary, capricious, or contrary to law.

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<sup>1</sup>The Judge found in Applicant’s favor as to Guideline J. The Judge’s findings and conclusions under Guideline J are not in issue.

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 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 that 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. 06-23384 at 3 (App. Bd. Nov. 23, 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. 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 as a whole, 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)). Accordingly, the Judge's ultimate unfavorable security clearance decision under Guideline F is sustainable.

With regard to Applicant's alternative request that the security clearance process be postponed until his financial situation has improved, the Board has no authority to grant such an action.

### **Order**

The Judge's unfavorable security clearance decision is AFFIRMED.

Signed: Michael D. Hipple

Michael D. Hipple  
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