

KEYWORD: Guideline F

DIGEST: Although Applicant had made some efforts to resolve his debt, these efforts were not sufficient to mitigate the substantial amount of delinquent debt alleged in the SOR. Adverse decision affirmed.

CASENO: 08-07486.a1

DATE: 05/05/2009

DATE: May 5, 2009

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| In Re: |) | |
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| ----- |) | ISCR Case No. 08-07486 |
| |) | |
| 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 October 15, 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 February 23, 2009, after the hearing, Administrative Judge Noreen A. Lynch denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's decision is arbitrary, capricious, and contrary to law. For the following reasons, the Board affirms the Judge's unfavorable decision.

Applicant asserts that he feels he only owes a small portion of the outstanding debts attributed to him, that his ex-wife accumulated many of the debts behind his back while he was deployed in the military, that he intends to contest most of the spousal and child support arrearages currently outstanding against him, that he has given twenty years of faithful service to his country, that he has control over his finances now that he is away from his ex-wife, and that he is trustworthy.

Applicant also states that he was not well prepared for his hearing, could not afford an attorney, did not understand that he could use character witnesses, and did not speak well in the hearing setting. Applicant's assertions do not establish error on the part of the Judge nor do they establish a denial of procedural due process rights under the Directive.

The Judge found that Applicant had a 2002 bankruptcy which discharged more than \$93,000 of debt. Applicant's current total delinquent debt is approximately \$50,000. The Judge also found in Applicant's favor regarding several of the SOR allegations. The Judge acknowledged that Applicant's wife was responsible for some of the debt, but she explained why this fact did not overcome the government's security concerns. A review of the record indicates that the Judge's factual findings are supported by the evidence.

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). 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).

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, notwithstanding the partial applicability of two Guideline F Mitigating Factors, the evidence in mitigation was of insufficient strength to overcome the government's security concerns. Specifically, the Judge noted that Applicant had engaged in repayment efforts or efforts to resolve debts through a 2002 bankruptcy and had paid a number of small debts. The Judge ultimately concluded, however, that because of the substantial amount of delinquent debt remaining, Applicant had not established sufficient mitigation to satisfy his burden of overcoming the government's case. This conclusion is reasonably supported by the record. The Judge also considered Applicant's service to the country and the difficulties presented by Applicant's marriage, separation, and divorce in her whole person analysis.

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: Michael D. Hipple

Michael D. Hipple
Administrative Judge
Member, Appeal Board