

KEYWORD: Guideline F

DIGEST: Applicant’s evidence was not enough to mitigate the Guideline F security concerns in his case. Applicant submitted new matters, which the Board cannot consider. Adverse decision affirmed.

CASENO: 08-08908.a1

DATE: 11/02/2009

DATE: November 2, 2009

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In Re:)	
)	
-----)	ISCR Case No. 08-08908
)	
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 February 19, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 19, 2009, after the hearing, Administrative Judge Michael H. Leonard 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 decision is arbitrary,

capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable decision.

Applicant's appeal brief contains a discussion of his past financial problems, the difficulties he has encountered in dealing with them, the efforts he has made in attempting to resolve his financial delinquencies, and his career accomplishments. Some of the matters discussed by Applicant are reiterations of evidence presented and argued at the hearing. Other matters discussed by Applicant and documents submitted with the appeal brief are not included in the record below. The Board cannot consider new evidence on appeal. Directive, ¶ E3.1.29. The Board construes Applicant's appeal as raising the issue of whether the Judge should have concluded that Applicant's financial problems are mitigated.

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. He discussed the applicability of Guideline F, Mitigating Condition 2¹ at some length, noting Applicant's motorcycle accident and resulting unemployment were beyond his control. However, the Judge concluded that there was insufficient evidence to conclude that Applicant acted prudently in monitoring and resolving his financial difficulties in the six years since the accident. This conclusion is reasonably supported by the record as are the Judge's conclusions about the applicability of the other mitigating conditions and his 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 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 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 is sustainable.

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."

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board