

KEYWORD: Guideline F

DIGEST: Applicant failed to demonstrate that the Judge either failed to consider, or that he mis-weighted, the record evidence. Applicant’s prior good security record does not prevent the Government from making an adverse clearance decision. The effect that an adverse decision may have on an applicant is not relevant in a clearance decision. Adverse decision affirmed.

CASE NO: 08-09592.a1

DATE: 04/18/2011

DATE: April 18, 2011

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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 May 13, 2010, 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 decision on the written record. On January 31, 2011, after considering the record, Administrative Judge Mary E. Henry denied Applicant’s request for a security clearance. Applicant

appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

On appeal, Applicant raises the following issue: whether the Judge's decision denying him a security clearance is arbitrary, capricious, or contrary to law. Consistent with the following discussion, we affirm the Judge's adverse security clearance decision.

The Judge made the following relevant factual findings: Applicant served on active duty in the United States Air Force for 13 years and since then has worked primarily for Department of Defense contractors. Applicant has held a security clearance for twenty years. Applicant's wife worked in real estate. Around 2006, they began buying real estate for rental purposes. They furnished the properties and provided telephone and internet services in order to rent them to military and civilian personnel on short assignments or temporary duty in their area, basing their rental rates on the government's per diem rates. Applicant and his wife purchased several properties in 2006 and 2007. At first, they were able to rent their properties as planned. By September 2007, their rental income declined, and they experienced difficulties in meeting their mortgages and other financial obligations. Their problems arose because of the slowdown in the economy and because hotel chains built properties that competed for tenants.

Applicant attempted to resolve his mortgage delinquencies in 2008, but two of the rental properties were foreclosed. In November 2008, Applicant signed loan modification agreements on the first and second mortgages on his home and one rental property. As of October 2009, Applicant was in compliance with the modified agreements on both first mortgages. Also in November 2008, Applicant and his wife hired a debt solutions company to resolve \$20,000 in unsecured debt. The company charged \$3,000 for their services. After several months Applicant and his wife decided to withdraw from the company's plan and resolve their debts themselves. Applicant has paid several delinquent credit card accounts that were not listed in the SOR.

The SOR listed 11 continuing delinquencies totaling approximately \$740,000. The Judge found in Applicant's favor as to two mortgage debts on the foreclosed properties, noting that credit reports show zero balances for those debts. It is possible that some of the other debts are duplicates, but there is no documentation of that. Applicant's wife obtained a full-time job in 2008, increasing the amount of income available for debt repayment. Applicant has not made payments on the second mortgages on his home and one rental property and states that he does not have funds to do so. Applicant's job changed in 2009, but he has not shown how this has impacted his finances. Applicant has not explained his inability to continue to meet his financial obligations and resolve his remaining debts.

Applicant argues that the Judge's decision denying him a security clearance is arbitrary, capricious, or contrary to law.

Along with his appeal, Applicant sent additional information about his financial circumstances, including steps he has taken to improve his situation since the Judge issued her decision. Applicant also sent a letter dated March 22, 2011, with further information. The Board is unable to consider information that was not part of the record, because the Board cannot consider new evidence on appeal. *See* Directive ¶E3.1.29. Moreover, the Judge's decision was based entirely on the government's File of Relevant Material (FORM) including Applicant's response to the SOR.

In November 2010, Applicant received a copy of the FORM and had the opportunity within 30 days to submit materials to further refute, extenuate, or mitigate the information in the FORM. He did not do so. The submission of further information after the Judge issued her decision is not indicative of error on the part of the Judge.

Applicant states that he is an honest person and would never compromise the interests of the United States for financial benefit. He contends that he conducted his financial affairs in a prudent fashion and that his current situation is a result of the downturn in the real estate market and the economy as a whole, matters over which he had no control. In effect, Applicant is arguing that the Judge should have found the government's security concerns under Guideline F to be mitigated, but either did not consider or did not give adequate weight to his evidence of mitigation. There is a rebuttable presumption that the Judge considered all the record evidence, unless the Judge specifically states otherwise; and there is no requirement that the Judge mention or discuss every piece of record evidence when reaching a decision. *See, e.g.*, ISCR Case No. 08-06582 at 3 (App. Bd. Apr. 3, 2009). Applicant admitted the SOR allegations against him. The burden then shifted to Applicant to extenuate or mitigate the security concerns raised by those allegations. Directive ¶ E3.1.15. The Judge concluded that Applicant did not present evidence sufficient to overcome the security concerns raised. The application of disqualifying and mitigating conditions and whole-person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. Thus, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance 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*. 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 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. 07-18303 at 2-3 (App. Bd. Nov. 13, 2008).

With regard to Applicant's argument that he is trustworthy and has held a security clearance for almost 20 years without incident, the government need not wait until an individual mishandles or fails to safeguard classified information before it can make an unfavorable security clearance decision. *See Adams v. Laird*, 420 F. 2d 230, 238-239 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). An unfavorable security clearance decision can be based on circumstances that raise security concerns sufficient to preclude a determination that it is clearly consistent with the national interest to grant or continue a security clearance for a given applicant. *See Department of Navy v. Egan*, 484 U.S. 518, 528-529 (1988). A history of financial problems is a circumstance that raises security concerns. *See, e.g.*, ISCR Case No. 08-00435 at 3 (App. Bd. Jan. 22, 2009). In light of the record here, the Board concludes that the Judge had a rational basis for concluding that Applicant's history of financial difficulties raised such concerns and that Applicant did not present evidence sufficient to extenuate or mitigate those concerns. The Judge's decision is sustainable.

Applicant states that the loss of his job due to denial of his security clearance will have an adverse impact on his ability to continue to improve his financial situation. However, the effect that an adverse decision may have on an applicant is not a relevant or material consideration in evaluating his security clearance eligibility. *See, e.g.*, ISCR Case No. 09-05398 at 3 (App. Bd. Jan. 13, 2011).

Applicant points out that he rarely handles classified materials and that possession of a security clearance is a condition of employment only because of the location of his job. It is irrelevant whether Applicant's position requires a security clearance for access to classified materials or for access to a secure location. Either type of access implicates the national security interests of the United States and requires a finding that it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. *See, e.g.*, ISCR Case No. 04-12778 at 2 at n. 1 (App. Bd. Mar. 19, 2007). Accordingly, Applicant's limited access to classified material does not render the Judge's decision arbitrary, capricious, or contrary to law.

### **Order**

The Judge's decision denying Applicant a security clearance is **AFFIRMED**.

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

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

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