

KEYWORD: Guideline F

DIGEST: Applicant relies heavily on Exhibit H. The Judge cited Exhibit H by name twice. The Judge reasonably noted the deletion of debts from Applicant's credit report were without explanation. Adverse decision affirmed.

CASENO: 08-10204.a2

DATE: 06/21/2010

DATE: June 21, 2010

_____)	
In Re:)	
)	
-----)	ISCR Case No. 08-10204
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Samuel Bluck, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On December 30, 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 that the case be decided on the written record. On July 23, 2009, after the close of the record, Administrative Judge Juan J. Rivera denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30. On October 6, 2009 the Appeal Board remanded the case back to the Judge for further processing. The Judge issued an Order, dated February 16, 2010, reopening the record. Applicant submitted several documentary Exhibits. Applicant’s submissions after remand were collated by the Judge into two collections: App. Ex. 2 (this included a brief by Applicant) and App. Ex. 3 (this also included the Department Counsel’s response to Applicant’s Exhibits). The Judge issued a remand decision dated March 29, 2010, which again denied Applicant’s request for clearance.

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.

The Judge found that all but two of the 19 delinquent debts or charged off accounts alleged in the SOR are Applicant’s unresolved debts and have been delinquent for a number of years. The Judge noted that some of the delinquent debts have been removed from Applicant’s most recent credit report. The Judge noted the absence of evidence of payment to creditors or efforts to contact them. He further noted the absence of any specific explanation by Applicant for each debt. The Judge did cite Applicant’s general claims that his debts arose: (1) when he was awaiting prosecution on felony charges and thus unable to obtain a job; and (2) from identity theft and fraud committed by Applicant’s ex-wife.

The Judge concluded that the Applicant’s conduct and circumstances are covered by two disqualifying conditions.¹ In that context he noted that Applicant’s most recent credit report had deleted some debts without any explanation. The Judge discussed three mitigating conditions but only gave Applicant credit under one of them, Directive, Enclosure 2 ¶ 20(b),² and that credit was only partial. The Judge explained that Applicant was entitled to some consideration because of his divorce but that was limited by the lack of evidence of responsible action under the circumstances. The Judge gave Applicant no credit for circumstances pertinent to his criminal conduct.

¹The two disqualifying conditions are Directive, Enclosure 2 ¶ 19 (a): inability or unwillingness to satisfy debts and Directive, Enclosure 2 ¶ 19(c): a history of not meeting financial obligations.

²The 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.

Applicant relies heavily on Applicant's Exhibit H, a credit report dated February 25, 2010, which reflects only four debts for a total of under \$1,000. The Judge cited Exhibit H by name twice in his findings of fact. The Judge's Analysis section reasonably notes the deletion of debts from Applicant's credit report without any explanation. The Judge clearly considered Exhibit H. Given the Judge's reasonable explanation for his analysis of the Exhibit, what remains, at most, is a disagreement about weight. 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).

Applicant argues that he has satisfied the requirements for mitigation and relies on the decision in ISCR Case No. 08-06567 (App. Bd. Oct. 29, 2009) for the proposition that applicants are not required to be debt-free, nor are they required to have a plan for immediate or simultaneous repayment of debts. Applicant states that all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment of debts, accompanied by concomitant conduct that evidences a serious intent to effectuate the plan. The Judge here explained why he could not conclude that Applicant had met his burden of persuasion that he had acted responsibly. 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 also discussed the applicability of the mitigating conditions from Directive, Enclosure 2 ¶ 20 at some length, but indicated with sufficient detail why all but one of the Guideline F mitigating conditions were not pertinent to Applicant's conduct and circumstances in this case and, thus, could not be brought to bear to alleviate the government's security concerns. Given the record before the Judge, his analysis is sustainable.

Finally, Applicant cites to two hearing office cases to support his arguments for reversing the Judge's decision. We give due consideration to these cases. However, each case must be judged upon its own merits. Directive, Enclosure 2 ¶ 2(b). The cases cited by Applicant are factually distinct from his in significant ways. In any event, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. See ISCR Case No. 06-24121 at 2 (App. Bd. Feb. 5, 2008).

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 reached reasonable conclusions. "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.

Order

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

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board