

KEYWORD: Guideline F

DIGEST: Applicant failed to demonstrate that the Judge mis-weighed the record evidence. The Board has no authority to grant Applicant a probationary security clearance. Adverse decision affirmed.

CASENO: 09-00620.a1

DATE: 08/26/2010

DATE: August 26, 2010

In Re:	)	
	)	
-----	)	ISCR Case No. 09-00620
	)	
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 9, 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 Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 11, 2010, after the hearing, Administrative Judge Michael H. Leonard denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge gave adequate weight to his evidence of mitigation. Applicant also requests that the Board grant him a three-month

probationary security clearance, during which time he could prove his financial responsibility. Finding no error, we affirm the Judge's decision.

The Judge made the following relevant findings of fact: Applicant is 27 years old and has one child for whom he voluntarily pays child support when he can afford to do so. Applicant has a job offer as a research analyst, but must have a security clearance in order to begin working. Applicant has been unemployed since September 2009, when he was laid off from a job with an electronics company. At present, Applicant's only income is from unemployment compensation, which amounts to only \$900 to \$1,000 per month. Applicant has a history of financial problems. Applicant traces his financial difficulties to an on-the-job back injury which prevented him from working from December 2005 until April 2006. The workers' compensation Applicant received at that time did not cover his expenses. Applicant used credit cards to pay his living expenses and fell behind on his bills. The SOR alleges 13 debts, six of which are student loans. As of November 2009, the student loans totaled about \$55,695. Applicant provided documentation to show that he has made two \$10 payments on each of four of the debts, payments totaling \$45 on another, and payments totaling about \$374 toward the student loans.

Applicant contends that the Judge did not give adequate weight to his evidence of mitigation. 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*. 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 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).

A review of the record indicates that the Judge weighed the mitigating evidence offered by Applicant against his financial history and considered the possible application of relevant mitigating conditions and factors. Decision at 6-8. Citing Applicant's history of financial difficulties, the large amount of his debt, and his lack of a track record in making payments, the Judge reasonably explained why the evidence Applicant had presented in mitigation was insufficient to overcome the government's security concerns. *Id.* The Board does not review a case *de novo*. The mitigating 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).

In his appeal brief, Applicant included a request that the Board grant him a probationary clearance for a period of at least three months to allow him to prove his financial responsibility. The Board has no authority to grant such a request. See, e.g., ISCR Case No. 06-22986 at 2 (App. Bd. Nov. 26, 2008).

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, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines 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.’” *Dep’t of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Accordingly, the Judge’s adverse decision is sustainable.

**Order**

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

Signed: Michael Y. Ra’anan  
Michael Y. Ra’anan  
Administrative Judge  
Chairperson, 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