

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge concluded that Applicant presented no evidence that he has paid or attempted to resolve any of his debts since 2006. The Judge also concluded that Applicant's failure to pay even the smallest of his debts shows that he is financially overextended. Adverse decision affirmed.

CASENO: 09-03765.a1

DATE: 05/07/2010

DATE: May 7, 2010

In Re:)	
)	
-----)	ISCR Case No. 09-03765
)	
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 June 30, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 26, 2010, after the hearing, Administrative Judge Juan J. Rivera 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 adverse security clearance decision was arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable decision.

The Judge made the following findings pertinent to the issues raised on appeal: Applicant filed for bankruptcy in 1998 because of his financial inexperience and immaturity. He was 24 years old at the time, and had purchased a car, acquired a large credit card debt, and lent \$8,000 to a friend. Applicant had no financial problems from 1998 until sometime in 2006, when he and his wife made a number of financial mistakes. They bought a large home, took out a \$17,000 loan to purchase home furnishings, and purchased two large vehicles. Shortly thereafter, Applicant’s wife lost her job and was not able to find full time employment for the next two years. Applicant and his wife currently earn a total of \$7,600 per month. Nevertheless, their earnings are not sufficient to pay day-to-day living expenses and current debts, even without considering delinquent debts. Applicant and his wife currently have \$51,576 in delinquent and charged off accounts. Since 2006, Applicant has made no effort to contact any of his creditors or to resolve any of his delinquent debts because he does not have the financial means to do so. He has promised to make satisfactory payment arrangements with all his creditors sometime in the future. However, at the present time, he does not have the financial means to pay for even the smallest of his delinquent debts.

The Judge concluded that Applicant presented no evidence to show that he has paid, settled, or attempted to resolve any of his debts since 2006. The Judge also concluded that his failure to pay even the smallest of these debts shows he is financially overextended. While Applicant established some circumstances that were beyond his control (his wife’s periods of unemployment), Applicant’s evidence is not sufficient to show he acted responsibly under the circumstances. The Judge concluded that Applicant’s financial problems are not under control and he does not have a viable plan to avoid similar financial problems in the future.

On appeal, Applicant makes mention of a decision (apparently recent) to file bankruptcy. This fact is not part of the evidentiary record below. The Board cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant stresses that he was not behind on his debts before his wife lost her job, at which point he could not support his four children and his wife on one income. He maintains that he is not a security risk and that he is on the path of getting his finances in order. These factors, as well as his good character and flawless work habits, lead Applicant to assert that the Judge’s adverse security clearance decision is wrong. Applicant’s arguments do not establish error on the part of the Judge.

Applicant also challenges the Judge's findings of fact regarding his driving record and its consequences. The Board notes that the Judge made formal findings favorable to Applicant on all of the allegations brought under Guideline E, which concerned Applicant's driving history.

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 the mitigating factors listed under Guideline F and indicated in some detail why mitigating condition ¶ 20(b)¹ only partially applied and why it did not fully mitigate the financial concerns raised in the case. The Judge also described with specificity his reasons for not applying the other mitigating conditions listed under Guideline F. The Judge's analysis on these points is supported by the record evidence.

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: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board