

KEYWORD: Guideline F; Guideline E

DIGEST: Five of Applicant’s debts remain unresolved in an amount of \$18,037. He had 29 disciplinary infractions with his employer, and he did not report these on his security clearance application. The Judge’s conclusion that Applicant’s evidence in mitigation does not meet his burden of overcoming the security concerns arising from the financial and personal conduct guidelines is sustainable. Adverse decision affirmed.

CASE NO: 10-00046.a1

DATE: 10/01/2013

DATE: October 1, 2013

In Re:)	
)	
-----)	ISCR Case No. 10-00046
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 15, 2012, DoD 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 July 11, 2013, after the hearing, Defense Office of

Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason denied Applicant's request for a security clearance. Applicant 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 security clearance decision.

The Judge found the following: Applicant filed a Chapter 13 bankruptcy petition in September 1997. The petition was dismissed in October 2000 for non-compliance. Applicant encountered financial problems after his divorce in March 2007. His plans to start anew were negatively affected when he had a car accident in 2007. He suspended paying his creditors until he was fully adjusted to his new lifestyle. His debt consisted of credit card debt. When he completed credit card applications, Applicant intended to pay the bills. However, financial issues would invariably arise to prevent Applicant from paying his creditors. In 2010, Applicant enrolled in a debt payment plan to resolve 11 debts. As of December 2012, four debts had been settled and five debts totaling \$11,042 were still unresolved. In April 2013, these five debts were still unresolved. Applicant's total delinquent accounts total approximately \$18,037.

Applicant has had 29 disciplinary infractions which were issued throughout his employment with his current employer. These included a citation for losing property, repeated failures to notify of medical appointment or medical leave, and repeated tardiness. He has additional violations that occurred after the SOR was issued. Applicant's personnel file contains a letter that states that reprimands, suspensions, or termination are valid for a period of 12 months from the employee's date of hire, and cannot be considered after that period has ended. Therefore, at the end of the 12-month period, any infractions that occurred during the period become void. Applicant equated his company's disciplinary policy to a juvenile record that is sealed when the person becomes an adult. Though some of the letters in Applicant's personnel file cite specific days Applicant was to be suspended, he indicated he was never suspended from work.

In 2009, Applicant signed and certified a security clearance application. In response to a question asking whether he had ever received a warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace or for violating a security rule or policy, Applicant answered "no." Initially, he testified that he could supply no reason for answering "no" to the questions. Then he explained he did not think he was required to reveal the disciplinary infractions because of the 12-month rule. In an interview with an investigator, Applicant admitted he was reprimanded for losing keys, but denied having any other security violations at his current employment.

The Judge concluded: When the SOR was published, Applicant had delinquent debts totaling more than \$18,000 owed to 16 creditors. He has provided insufficient evidence to confidently conclude the circumstances leading to the indebtedness will not recur. Even with savings of \$6,000 and a monthly remainder of \$1,953, Applicant did not attempt to apply more funds to his debt plan until two days before the hearing. Applicant has never received financial counseling and has a history of credit abuse. He enrolled in a debt plan, but the fact that he has not aggressively ensured that all delinquent debts are in the debt plan undercuts his efforts to demonstrate that his debts are being resolved or under control. While Applicant may not have received punishment for his

workplace infractions, he was required to answer the security clearance application questions truthfully. He should have disclosed the warnings and discipline. He also deliberately provided false information in his security interview. Applicant's disciplinary infractions between 2002 and 2012 constitute a pattern of rule violations that supports a whole-person assessment of questionable judgment, untrustworthiness, and unreliability. Applicant's evidence in mitigation does not meet his burden of overcoming the security concerns arising from the financial and personal conduct guidelines.

Applicant asserts that, regarding the falsification allegations, he made some mistakes and miscalculated some dates. He states that this caused him to put down wrong answers. Regarding financial considerations, Applicant states that he is on course to have all of his creditors paid in two to three months. The Board construes these arguments as raising the issue of whether the evidence reasonably supports the Judge's adverse security clearance determination. After a review of the evidence and the Judge's decision, we conclude that the Judge's material findings of security concern are supported by substantial record evidence or constitute reasonable inferences from the evidence. We find no reason to conclude that the Judge did not properly weigh the evidence or that he failed to consider all the evidence in the record. *See, e.g.*, ISCR Case No. 11-06622 at 4 (App. Bd. Jul. 2, 2012). We have considered the totality of Applicant's arguments on appeal and find no error in the Judge's ultimate conclusions regarding mitigation.

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 the 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.

Order

The decision of the Judge 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: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board