

KEYWORD: Guideline F

DIGEST: Applicant had two previous discharges in bankruptcy and twelve delinquent debts currently. Adverse decision affirmed.

CASENO: 10-08508.a1

DATE: 01/04/2012

DATE: January 4, 2012

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In Re:)	
)	
-----)	ISCR Case No. 10-08508
)	
)	
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 April 13, 2011, 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 September 6, 2011, after considering the record, Administrative Judge Michael H. Leonard denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse clearance decision is arbitrary, capricious, or contrary to law.

Applicant contends that the Judge’s adverse decision should be reversed because her financial difficulties stem from bad timing, numerous illnesses and loss of supplemental support. Applicant’s argument does not demonstrate that the Judge erred in reaching his adverse decision.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. 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*. 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. 10-08308 at 2 (App. Bd. Nov. 3, 2011).

In this case, the Judge found that Applicant had a lengthy history of not meeting financial obligations. In 1996 and 2005, she had received Chapter 7 discharges in bankruptcy. At the time the case was submitted for decision, she had 12 delinquent debts, totaling approximately \$18,000, from collection or charged-off accounts, and had presented no documentary evidence showing that she had paid, settled, reduced the balance owed, or otherwise resolved those debts. Decision at 2-3 and 5-7. The Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct, and considered the possible application of relevant conditions and factors. He noted that Applicant’s financial problems were due, in part, to the various circumstances she had explained, and that those circumstances were largely beyond her control. He also noted that she was making some effort, via financial counseling, to put her financial house in order. However, the Judge reasonably explained why that mitigating evidence was insufficient to overcome the government’s security concerns in light of the totality of the record evidence. *Id.* at 6-7.

The Board does not review a case *de novo*. 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). The Judge’s 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: Jean E. Smallin _____

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields _____

William S. Fields
Administrative Judge
Member, Appeal Board