

KEYWORD: Guideline F

DIGEST: A party’s ability to argue for a different interpretation of the record evidence is not sufficient to demonstrate that the Judge weighed in the evidence in a manner that was arbitrary, capricious, or contrary to law. Once the Government presents evidence of security concern, the burden of persuasion shifts to the applicant. Adverse decision affirmed.

CASE NO: 11-05490.a1

DATE: 11/14/2012

DATE: November 14, 2012

In Re:	)	
	)	
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	)	
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 March 21, 2012, 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 August 10, 2012, after the hearing, Administrative Judge James F. Duffy 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 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 of fact: Applicant is 42 years old. The SOR alleged that Applicant had 20 delinquent debts totaling \$598,395. In his Answer to the SOR, Applicant denied three debts totaling about \$280,000. He admitted the remaining debts totaling \$318,395. After a career in the military, Applicant became a real estate agent. In 2005, he purchased four properties totaling about \$787,000. These include the home he currently lives in and a home for his parents in another city.

In the beginning, Applicant's real estate business was successful. However, the real estate market started to decline. Applicant's income, based on commissions, followed suit. He had difficulty renting his investment properties. His mother died in 2008 and he was saddled with the funeral expenses. He had to give up his position as a military reservist in April 2008 when his security clearance was revoked due to financial problems. In 2009 his wife required knee replacement surgery. Applicant fell behind on child support payments from his first marriage, and his real estate license was suspended in February 2010 because of those arrearages.

Applicant acknowledged that he has not had financial counseling. He estimated that his wife's income was about \$27,000 in 2011. In January 2012, he submitted a personal financial statement that reflected his net monthly income was \$1,701 and his total monthly expenses were \$1,980, which left him with a negative net monthly remainder.

The Judge reached the following conclusions: Applicant has multiple delinquent debts that remain unresolved. His financial problems are ongoing, significant, and cast doubt on his current reliability, trustworthiness, and good judgment. The downturn in the housing market, his wife's and his stepson's medical problems, and the passing of his mother were conditions beyond his control. However, for his financial difficulties to be fully mitigated, responsible conduct must be established. Of concern here are Applicant's financial commitments in 2005. During that year he purchased four properties totaling about \$787,000, two vehicles totaling over \$50,000, and an ATV for about \$6,725. He also obtained a homeowner's equity line of credit of over \$50,000. Those significant financial commitments over that short period of time raise questions about his judgment. He failed to show that he took meaningful action to address the delinquent debts prior to the suspension of his real estate license or the revocation of his security clearance. Applicant's financial situation remains unstable. He has not produced documentation showing regular payments towards his delinquent debts. He failed to produce a realistic plan for addressing them.

Applicant asserts that his financial troubles and derelictions are mitigated. His appeal brief is comprised principally of a reiteration of facts concerning his circumstances that were presented below. Additionally, the brief contains factual assertions that are not part of the record below. The Board cannot consider new evidence. *See* Directive ¶ E3.1.29.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. 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). Applicant'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 made sustainable findings that Applicant had a lengthy and serious history of not meeting financial obligations and had made numerous choices regarding his finances that reflected questionable judgment. Central to the Judge's analysis was his conclusion that Applicant took on massive financial commitments in 2005 that greatly exceeded the resources available to him. The Judge also concluded that Applicant did not reasonably address these commitments while he still had some financial means to do so. These conclusions are supported by the record. The Judge adequately discussed why, given these factors, the disqualifying conduct established under Guideline F was not mitigated.

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.

**Order**

The Judge's decision is AFFIRMED.

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

Signed: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board