

KEYWORD: Guideline F

DIGEST: Appeal Board cannot consider new evidence on appeal. Applicant has not demonstrated error in the Judge’s findings of fact. Adverse decision affirmed.

CASE NO: 11-05492.a1

DATE: 12/19/2012

DATE: December 19, 2012

In Re:)	
)	
)	
)	ISCR Case No. 11-05492
)	
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 24, 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 the case be decided on the written record. On September 28, 2012, after considering the record, Administrative Judge Robert E. Coacher 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.

On appeal, Applicant seeks reversal of the Judge's adverse decision arguing that, given his current circumstances, he has taken reasonable steps to resolve his financial problems. He also asserts that he has now paid off two of his debts, and that ". . . until more money is available, it would not be in [his] best interest to make arrangements [to pay off his three other debts] because that would possibly cause further debt problems." Applicant's Brief at 1. His argument is predicated in part on matters not in the record below. The Board cannot consider this new evidence on appeal. See Directive ¶ E3.1.29. To the extent Applicant's brief could be construed as challenging the Judge's findings, he has not identified any harmful error that would change the outcome of the decision.

Applicant's presentation does not demonstrate that the Judge's decision is arbitrary, capricious or contrary to law. 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. 09-04601 at 2 (App. Bd. May 11, 2011).

In his decision, the Judge weighed the available evidence, evaluated the seriousness of the disqualifying circumstances, and considered the possible application of relevant conditions and factors. He noted that Applicant had presented favorable character evidence, but that he had not presented independent documentary evidence showing the payment of debts, the completion of financial counseling, or good-faith efforts to otherwise resolve his financial problems. Accordingly, the Judge reasonably explained why there was insufficient mitigating evidence to overcome the government's security concerns. Decision at 2, 3 and 5. 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). Therefore, the Judge's unfavorable security clearance decision is sustainable.

Order

The Judge's decision 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