

KEYWORD: Guideline F

DIGEST: Even if the Judge’s characterization of the vehicle (for which Applicant co-signed a note) as luxury is erroneous, such error is harmless. Adverse decision affirmed.

CASENO: 12-02765.a1

DATE: 04/11/2014

DATE: April 11, 2014

In Re:)	
)	
-----)	ISCR Case No. 12-02765
)	
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 August 8, 2013, DoD 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 January 17, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez 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 made the following findings: Applicant is 49 years old. Applicant's SOR lists 26 delinquent debts, totaling over \$60,000. Applicant admits all the debts listed in the SOR. Several of the debts have been reduced to judgments. On one of the judgments, Applicant has been making payments and he has reduced the amount owed from over \$10,000 to under \$5,000. His pay has been garnished to satisfy other judgments listed in the SOR. Except for this judgment, Applicant has made no voluntary payments towards the resolution of any of the SOR debts. Applicant admits that his financial trouble is primarily the result of reckless spending. For instance, he cosigned for the purchase of a luxury vehicle for his estranged wife, the loan defaulted, and a judgment was eventually obtained in 2008. His financial trouble was exacerbated by his medical condition, which put him out of work for nearly a year. He has been back to work full time since 2011, and has been receiving overtime pay on a consistent basis since 2012. An attempt to consolidate and resolve his delinquent debts with the assistance of a credit union failed owing to lack of follow through. After the hearing, Applicant filed for Chapter 7 bankruptcy to resolve his debts.

The Judge reached the following conclusions: None of the Guideline F mitigating conditions apply. Applicant's debts are numerous, substantial and ongoing. Although his financial situation is in part due to medical problems that left him unable to work and resulted in a decrease in income, he did not deal with his debts in a responsible manner. He has been working full-time and earning overtime pay for the past two years, and has only started to repay those debts that were reduced to judgment. His financial situation is not under control, as evidenced by his failure to pay his court-mandated child support. His recent decision to file for bankruptcy is a legal, viable avenue through which he can resolve his debts. However, such action does not mitigate the security concerns arising from his long track record of financial irresponsibility.

Applicant argues that two of the Judge's findings are in error. First, he takes issue with the Judge's characterization of the vehicle for which Applicant co-signed a note as a "luxury" vehicle. The term "luxury vehicle" cannot be precisely defined. However, even assuming, for the purposes of appeal, that the Judge's characterization is erroneous, the Board concludes that the error is harmless. Applicant's indebtedness problem was multi-faceted and longstanding. Nowhere in the Judge's analysis does he mention or depend on this characterization of the vehicle, or even the single instance of the cosigning. The Board concludes that any error on this point would not affect the outcome of the case.

Applicant states that he now owes considerably less than the \$60,000 aggregate amount of debt listed on the SOR. In his findings, the Judge notes that the \$60,000 figure is from the SOR, and

he then makes an independent finding that the amount owed by Applicant is \$55,000. The difference is largely attributable to the partial payment by Applicant of a debt that had been reduced to judgment. This finding is consistent with the record evidence. To the extent that Applicant is arguing that he owes significantly less than \$55,000, he has failed to establish error. The transcript portions and documentary exhibits cited by Applicant do not establish that the Judge's \$55,000 figure for the total amount of debt is excessive.

Applicant argues that he falls under an "unexpected medical circumstances" category, and that this had an effect on the state of his finances. In his decision the Judge acknowledged Applicant's medical problems and the resulting inability to work. The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. *See, e.g.*, ISCR Case No. 06-25157 at 2 (App. Bd. Apr. 4, 2008). 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 made sustainable findings that Applicant had a lengthy history of not meeting financial obligations, and, notwithstanding a period where health issues impacted his income, he had made voluntary payments on only one debt during a period where he was working full time and also earning overtime. He noted that, at the time of the hearing, Applicant still had a substantial amount of overdue indebtedness, and had offered no details of a payment plan, other than promises to pay. In light of the foregoing, the Judge could reasonably conclude that the concerns over Applicant's financial problems were unmitigated.

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: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, 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