

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge made sustainable findings that Applicant had a lengthy history of not meeting financial obligations. He noted that despite some progress, Applicant still had a significant amount of overdue indebtedness, including tax delinquencies. The Judge could reasonably conclude that Applicant's financial problems were still ongoing. Adverse Decision affirmed

CASENO: 12-03238.a1

DATE: 12/06/2013

DATE: December 6, 2013

In Re:)	
)	
-----)	ISCR Case No. 12-03238
)	
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 May 6, 2013, 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 September 26, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran 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.¹

The Judge found: Applicant is 49 years old. She has had custody of her three children since her first divorce. Her first husband rarely pays child support. In 2002, Applicant and her second husband bought a business. Her second husband managed the finances and used Applicant's name and social security number in connection with the business after the couple separated in 2004. He did not pay all the debts and taxes owed from the business. Applicant continued to work in the business until 2008, when it failed.

Applicant filed for Chapter 7 bankruptcy in 2007. The total amount of debt listed was in excess of one million dollars. Her debts were discharged in 2007. After closing the business, her employment was sporadic, with an extended period of unemployment in 2008 and 2009. A number of debts became delinquent. The SOR alleges 54 delinquent debts, unpaid judgments, and state tax liens. The total of the state tax liens is about \$25,227. Credit reports list a significant amount of tax liens as being released. An accounting firm is helping Applicant resolve the tax liens. Applicant established that a few of her non-tax debts have been paid, and that she is paying on a few other debts. In December 2012, Applicant entered into an installment agreement with the IRS to pay \$150 per month to resolve a tax debt of \$2,611 for tax year 2011. Applicant also owes the IRS about \$2,200 for tax year 2012.

Applicant received financial counseling as a requirement of her bankruptcy. She states that her finances are improving and that she intends to pay her debts one at a time until they are paid.

The Judge concluded: The actions of Applicant's first husband in largely failing to pay child support were beyond her control. Her second husband's actions in running the business were also beyond her control, as were the ultimate failure of the business and her unemployment. However, even giving Applicant the benefit of the doubt and crediting her with resolving all the debts she indicated were paid, disputed or discharged in bankruptcy, her failure to pay state sales taxes while running the business was irresponsible. Also, she has not acted responsibly toward her obligation to pay her federal taxes. Applicant has not acted responsibly under the circumstances and has not made a good-faith effort to pay all her debts. Her finances are not yet under control. Her financial issues are recent and ongoing, and there is no indication that they are unlikely to recur. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. Applicant is headed in the right direction, but shirking her tax responsibilities is not the way to get there.

¹The SOR contained a single allegation under Guideline E, which the Judge concluded favorably to Applicant. That favorable conclusion is not at issue on appeal.

Applicant asserts that she has come a long way and has made great strides to overcome past financial issues. She states that she has paid out over \$15,000 in payments to either clear up or start to clear up past issues. Applicant feels that she has been proactive in handling her financial issues, and that she has mitigated the security concerns caused by her debt difficulties. Applicant's assertions do not establish error on the part of the Judge.

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).

Applicant's appeal brief essentially argues for an alternate interpretation of the record evidence.

In this case, the Judge made sustainable findings that Applicant had a lengthy history of not meeting financial obligations, including a prior Chapter 7 bankruptcy, and a significant period where she failed to pay timely sales taxes while operating a business. He noted that despite some progress, at the time of the hearing Applicant still had a significant amount of overdue indebtedness, including outstanding tax delinquencies. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing. *See, e.g.*, ISCR Case No. 05-07747 at 2 (App. Bd. Jul. 3, 2007). A review of the Judge's decision reveals that, regarding Guideline F, the Judge listed the potentially applicable mitigating conditions and then discussed several components of those factors in his analysis. The Judge found in favor of Applicant as to a number of the Guideline F allegations. However, the Judge offered a narrative explanation as to why the disqualifying conduct under Guideline F was not fully mitigated. Applicant has not demonstrated that the Judge erred when he weighed the mitigating evidence against the seriousness of the disqualifying conduct.

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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board