

KEYWORD: Guideline F

DIGEST: A Judge is presumed to have considered all of the evidence in the record. Applicant failed to rebut that presumption or to show that the Judge mis-weighed the evidence. Adverse decision affirmed.

CASE NO: 14-00566.a1

DATE: 11/18/2014

DATE: November 18, 2014

In Re:)	
)	
-----)	ISCR Case No. 14-00566
)	
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 March 26, 2014, 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 August 13, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Elizabeth M. Matchinski 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. He has a record of income tax delinquency. Although he and his spouse filed annual returns, they paid only \$200 of \$2,963 in federal taxes owed for 2008. They underpaid their tax obligations between 2009 and 2012 and amassed a tax debt of \$31,043. In 2009, Applicant and his wife entered into the first of yearly installment agreements with the IRS to repay the late taxes, but missed monthly payments on at least two occasions. Even with ongoing payments, they owed delinquent federal taxes of \$25,362 (shown alternatively as \$23,362) as of January 2014. By the end of 2013, Applicant and his spouse also had a delinquent state income tax liability of \$2,263 that they repaid at the rate of \$265 per month.

Applicant retired from a 20 year career in 2007. He then opened up his own business, which did not prove profitable. At the time he ran the business he was able to rely on a pension from his previous job, which paid \$3,516 a month. In 2008, he began working for a manufacturing firm. He and his wife had an adjusted gross income of \$231,000 in 2009, \$208,000 in 2010, \$176,000 in 2011, and 197,000 in 2012. Applicant and his wife accumulated over \$190,000 in consumer credit debt from 2010 to 2014 and at one point were considering filing for bankruptcy. They were able to retire most of this indebtedness, although several of the accounts were settled for less than the full balance owed. Applicant had an \$11,582 credit card debt in collection at the end of 2012. In the spring of 2014, he had two outstanding charged-off credit card accounts with balances of \$4,115 and \$10,340 on his credit record. Applicant and his spouse are paying less than their full mortgage. Between the spring of 2012 and the spring of 2014, Applicant and his wife were 30 days late on their mortgage payments seven times. As of March 2014, they were making only partial payments on their mortgage, which was considered \$4,018 past due.

The Judge reached the following conclusions: Applicant may reasonably have not foreseen the difficulties in attracting clients for his new business. However, he was not without income during this period and the adjusted gross income amounts for him and his wife should have enabled them, had they handled their finances responsibly, to pay most, if not all, of the taxes they owed. To a large extent, their financial difficulties were caused by an over reliance on consumer credit, which they gave priority over paying taxes when due. Applicant and his wife still owe over \$23,000 in past-due federal taxes. Missed payments to the IRS undermine confidence in Applicant's financial judgment. There is no persuasive evidence that Applicant's financial situation is currently under control to the point where he can be counted on to comply with his income tax payment obligations. With the large federal income tax delinquency, and evidence of other recent financial problems (e.g., the late payments on his mortgage), it is not clearly consistent with the national interest to grant Applicant a security clearance at this time.

Applicant argues that the Judge failed to consider the "totality of the circumstances" of his case, especially those circumstances that negatively impacted him and led to his financial difficulties. He asserts that he acted responsibly under the circumstances by initiating a good faith

effort to repay his overdue creditors and resolve his debt. Applicant has failed to establish error on the part of the Judge.

A Judge is presumed to have considered all the evidence in the record unless he or she specifically states otherwise. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009). All of the factors cited by Applicant on appeal as contributing factors to his financial difficulties were discussed at some length by 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 history of not paying income taxes in a timely fashion, and those delinquencies were the result of excessive use of consumer credit. She noted that despite a recent pattern of regular payments toward tax delinquency reduction, at the time of the hearing Applicant still had an amount of overdue tax indebtedness that actually exceeded his original liability. The Judge also considered signs of continuing trouble, including missed payments to the IRS and irregularities in Applicant's payments on his mortgage. Given these facts, 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 her analysis. The Judge found in favor of Applicant as to one of the two Guideline F allegations. However, the Judge offered a detailed explanation as to why the disqualifying conduct under Guideline F was not fully mitigated. The Board finds no reason to believe that the Judge did not properly weigh the evidence or that she failed to consider all the evidence of record. *See, e.g.*, ISCR Case No. 11-06622 at 4 (App. Bd. Jul. 2, 2012).

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 Ra'anan
Michael 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