

KEYWORD: Guideline F

DIGEST: The Judge reasonably explained why the mitigating evidence was insufficient to overcome all the government's security concerns. Adverse decision affirmed.

CASENO: 14-0918.a1

DATE: 07/08/2015

DATE: July 8, 2015

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In Re: )  
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 ----- ) ISCR Case No. 14-01918  
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 Applicant for Security Clearance )  
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**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 September 2, 2014, 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 April 29, 2015, after the hearing, Defense Office of Hearings and Appeals Administrative Judge Roger C. Wesley denied Applicant’s request for a security clearance. Applicant timely 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.

Applicant contends that the Judge’s adverse decision should be reversed because the Judge did not correctly weigh the evidence. Specifically, she argues that the Judge should have given “a little more weight” to evidence that her financial problems were due her husband’s loss of employment, and her and her husband’s medical problems. Applicant’s Brief at 2. As part of her submission on appeal, she offers new evidence in the form of a statement that she has retained an attorney to file for bankruptcy on her behalf, and will be increasing her monthly installment payments to the Internal Revenue Service (IRS) on her outstanding tax debt. The Board cannot consider this new evidence on appeal. *See* Directive ¶ E3.1.29.

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. 10-08308 at 2 (App. Bd. Nov. 3, 2011).

In this case, the Judge found that Applicant had a lengthy history of not meeting financial obligations, including failing to file Federal income tax returns for 2011 and 2012. Decision at 2-3. While the Judge considered the fact that Applicant’s financial problems “were mostly attributable” to her husband’s medical problems and loss of work, he also noted that she had “not developed any meaningful payment plan or other means for resolving her remaining debts,” had “not followed up with contacts of her creditors,” and had “resisted proceeding with her petition for Chapter 7 bankruptcy relief.” *Id.* at 5-6. In light of the foregoing, the Judge could reasonably conclude that Applicant’s financial problems were still ongoing.

The Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying circumstances and considered the possible application of relevant conditions and factors. He found in favor of Applicant with respect to some of the allegations, but reasonably explained why the mitigating evidence was insufficient to overcome all of the government’s security concerns. 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. After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his decision. “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 under is sustainable.

**Order**

The decision of the Judge is AFFIRMED.

Signed: Michael Ra’anan  
Michael 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