KEYWORD: Guideline F

DIGEST: Applicant references a statement in a report by an investigator, and he objects to the Judge's failure to mention the statement. The statement represents the interviewer's summary of Applicant's statements, not the interviewer's opinion of Applicant. A Judge is not required to discuss every piece of evidence in his decision. Adverse decision affirmed

CASENO: 14-04124.a1

DATE: 02/19/2016

DATE: February 19, 2016

In Re:	)	
-------	)	ISCR Case No. 14-04124
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 November 12, 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 November 21, 2015, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Michael H. Leonard denied Applicant's request for a security clearance. Applicant timely 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 decision.

The Judge made the following findings of fact: Applicant is 56 years old. Applicant has a history of financial problems consisting of charged-off credit card accounts. The SOR allegations consist of six delinquent accounts for a total of about $138,000. He admitted them in his answer to the SOR, and five of the six accounts are established by credit reports from 2014 and 2015. One of the debts, a charged-off account for $6,269, was resolved in 2011 when the creditor cancelled the debt and issued Applicant a Form 1099-C. The five other charged-off accounts for about $132,000 are not paid, settled, in repayment, in dispute, or otherwise resolved. Applicant's general plan or intent is that he is willing and able to pay these debts, but he does not know whom to pay, he does not know who currently owns the debts, and no creditor has sued him for collection. In addition to the indebtedness in the SOR, Applicant disclosed four other delinquent accounts. These accounts were resolved by paying less than the full balance. He paid about $6,015 to settle nearly $38,000 of credit card debt. Applicant also has an installment repayment agreement with the IRS for back taxes, and the balance owed as of May 2015 was $24,256.

Applicant traces his financial problems to 2006 when he and his wife both lost their longtime jobs after their employer filed for bankruptcy. When Applicant began his current employment in 2008 he was still dealing with the sale of his former home. To facilitate the sale, and avoid a short sale of his devalued property, Applicant contributed about $58,000 to the sale. The $58,000 was paid through an assortment of credit cards. Applicant is carrying a $127,000 balance on a mortgage loan on a property he inherited with his brother. The loan is currently up to date. Applicant is also up to date on the mortgage for his current house. He and his wife have undergone financial counseling. He has not made a payment on the credit card debts since 2010. He sent letters in 2011, 2012, and 2013 to the creditors with offers of settlement but received no replies. Applicant's current gross annual income is about $160,000. According to his budget, he runs a net monthly surplus of about $1,000. His other major assets include investment and retirement accounts of about $121,000 and two time-share vacation properties valued at $18,250 each. The time shares were bought before Applicant's financial problems were apparent.

The Judge reached the following conclusions: The evidence indicates inability or unwillingness to satisfy debts on the part of Applicant. He misused or abused credit card accounts to the point where he was overextended as well as a good candidate for bankruptcy. There are a number of extenuating or mitigating circumstances to consider in Applicant's case. He has good references and a favorable employment record. He and his wife experienced unexpected job loss in 2006, although that was lessened by a severance package that included monthly pension

payments. He had periods of unemployment between jobs and incurred the expense of a major relocation in 2008 for his current job. He sought professional guidance for his financial problems and made settlement offers to resolve the credit card accounts. However, none of this evidence is sufficient to mitigate the security concern stemming from Applicant's ongoing and largely unresolved financial problems. It appears that, unless a creditor brings a collection lawsuit, he is simply waiting for his bad debts to age off credit reports or become unenforceable under his state's statute of limitations. Although that approach is perfectly legal, it is not an approach that demonstrates good faith and responsible conduct when seeking access to classified information. Applicant has paid about $6,000 (or about 3.5%) of the $176,000 in delinquent credit card debt he incurred, which may fairly be described as a token if not meager effort. Although he appears to take these matters seriously, he has not displayed sufficient persistence and intensity in addressing his financial problems.

Applicant points to matters in the record that he regards as favorable to him and asserts that the Judge erred in not including them in his decision. He states that the Judge did not mention that a financial counselor had told him that he was capable of addressing his financial problems himself and there was no need for the counselor to assist him. Applicant also states that the decision fails to mention that he has had no security, ethical, or disciplinary records during his employment, that he kept his employer fully aware of his financial problems, and that he properly disclosed all financial issues during his security investigation. Applicant's assertions do not establish error on the part of the Judge.

A Judge is not required to discuss each and every piece of evidence when making his decision. *See*, *e.g.*, ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007). Additionally, there is a rebuttable presumption that a Judge has considered all the evidence in the record . *See*, *e.g.*, ISCR Case No. 14-06093 at 3 (App. Bd. Dec. 4, 2015). The Judge viewed Applicant's experiences with financial counseling as matters in mitigation. Therefore, whether or not Applicant was told that he really did not need it would not be particularly relevant to the Judge's mitigation analysis. The Judge made favorable comments about Applicant's reputation for reliability and his positive work history. The mere fact that the Judge did not mention the absence of security violations in his decision does not establish that the Judge overlooked positive aspects of Applicant's employment record. Inasmuch as Applicant's honesty and forthrightness were not significant issues in the case, the Judge did not err by not discussing Applicant's disclosures to his employer and to security investigators.

Applicant appears to argue that the Judge misconstrued his testimony about his efforts at adopting a budget being "a work in progress." Applicant argues now that he was referring to his use of certain software tool as opposed to his overall efforts at drafting a budget when he used the "work in progress" language. After a review of the transcript evidence, the Board concludes that the Judge's interpretation of Applicant's testimony was reasonable.

Applicant references a statement in a final report by an investigator that he is not a risk to our country, and he objects to the fact that the statement is not mentioned in the Judge's decision. The statement represents the interviewer's summary of Applicant's statements during the interview,

not the interviewer's opinion of Applicant's status as a security risk. *See*, *e.g.*, ISCR Case No. 14-03069 at 3 (App. Bd. Jul. 30, 2015).

Applicant makes various assertions regarding conclusions of the Judge that he argues are incorrect. He asserts that he and his wife are doing all the right things to recover from their "financial hardship," that they have not lived beyond their means, that he does not have a "long time history" of financial problems, that the difficulties they did experience were a result of matters beyond their control, and their financial situation continues to improve. The Board construes these assertions as a claim by Applicant that the Judge did not properly consider the evidence in mitigation. Applicant has failed to 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. 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). Applicant's assertions of his efforts at debt resolution was evidence that the Judge was required to consider. However, such evidence does not mandate a favorable decision. Most of the favorable evidence cited by Applicant on appeal was mentioned by the Judge in his decision. Applicant's arguments are 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).

Central to the Judge's analysis was his conclusion that Applicant had not taken adequate steps to address his substantial, delinquent credit card debt, most of which remained outstanding at the time of the hearing, despite Applicant's apparent ability to accomplish more. The Judge was concerned that Applicant may have been waiting for the running of the applicable statute of limitations as a means of resolving the debts. This inference is supported by the record.

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 ultimate unfavorable security clearance decision is sustainable.

Order

The Judge's decision 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