

KEYWORD: Guideline F

DIGEST: Applicant asserts that she responded to the Government’s FORM notwithstanding the Judge’s finding to the contrary. Applicant provided no information as to the nature or identity of the material she claims she submitted, or the manner in which she submitted it. Given the lack of specificity and the presumption in favor of good faith and regularity of Federal employees when performing their duties, Applicant has not demonstrated that her due process rights were violated. Adverse decision affirmed.

CASENO: 15-00017.a1

DATE: 04/22/2016

DATE: April 22, 2016

In Re:)	
)	
-----)	ISCR Case No. 15-00017
)	
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 5, 2015, 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 that the case

be decided on the written record. On January 28, 2016, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey 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 issues on appeal: (1) whether the Judge decided the case on the full record, and (2) whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's adverse decision.

The Judge made the following findings: Applicant has 13 delinquent SOR debts totaling \$33,051. There is no evidence that Applicant received financial counseling. In her SOR response, Applicant claimed she was making payments on some of the debts. She also claimed that she had medical bills from a trip to the emergency room and she had no insurance. However, the record lacks corroborating or substantiating documentation and detailed explanations of the causes of her financial problems and other mitigating information. Applicant did not respond to the File of Relevant Material (FORM) submitted by the Government in this case.

The Judge reached the following conclusions: Applicant's failure to provide more detailed information and corroborating documentation shows a lack of judgment and responsibility that weighs against approval of her security clearance. There is insufficient evidence about why she was unable to make greater progress resolving most of her SOR debts. There is insufficient assurance that her financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, she failed to establish that financial consideration security concerns are mitigated.

Applicant asserts that she did, in fact, respond to the Government's FORM. She states that "it was mailed back in the following day." Appeal Brief at 1. No other information about any submissions Applicant claims to have made is provided. The Board will consider this assertion on appeal, even though it constitutes new evidence, as it raises an issue of procedural due process. *See, e.g.*, ISCR Case No. 14-06467 at 2 (App. Bd. Feb. 24, 2016). However, Applicant here has provided no information as to the nature or identity of the material she states she submitted, the volume of such material, when she submitted it, or the manner in which she submitted it.¹ There is a rebuttable presumption that Federal employees act with good faith and regularity when performing their duties. *See, e.g.*, ISCR Case No. 09-05846 at 5 (App. Bd. Aug. 1, 2012). This presumption includes actions of postal authorities and DOHA personnel upon receipt of written submissions from applicants. Moreover, as with appeal arguments regarding matters of substance, applicants are required to raise issues involving procedural due process with enough specificity to allow the Board to evaluate fully the claim of error. Applicant has failed to provide the requisite specificity in this instance. Applicant has not demonstrated that her procedural due process rights were violated.

The Board construes the balance of Applicant's appeal arguments as an assertion that the Judge did not properly evaluate matters in mitigation. Applicant's appeal brief includes assertions and attachments that were not part of the record below. The Board may not consider new evidence

¹To the extent that the Board might construe the attachments to the appeal brief as part of Applicant's original submission, such a course is undermined by the fact that several of the documents post-date the deadline for submission and some post-date the Judge's decision.

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. *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. The Board finds no reason to believe that the Judge did not properly weigh the evidence or that he failed to consider all the evidence of record. *See, e.g.*, ISCR Case No. 11-06622 at 4 (App. Bd. Jul. 2, 2012). We have considered the totality of Applicant's arguments on appeal and find no error in the Judge's ultimate conclusions regarding mitigation.

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). "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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board