



The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 21, 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 February 9, 2016, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Erin C. Hogan 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 found: A background investigation completed subsequent to July 2012 revealed that Applicant had delinquent debts in the form of a credit card debt in the amount of \$36,945, a second mortgage debt in the amount of \$31,710 and a second credit card debt in the amount of \$15,166. In 2006, both Applicant and his wife experienced reductions in their pay. The first credit card debt was used by his wife to cover living expenses, although this was unknown to Applicant. The second credit card was used to pay for a surgical procedure undergone by Applicant's wife. Because of financial difficulties, Applicant and his wife attempted to sell their home. This occurred during the housing market crash. They sold the home at a short sale in 2010. They took a \$35,000 loss, resulting in the outstanding mortgage debt.

After the sale of the home, Applicant and his wife separated, finally divorcing in 2011. He was required to pay off his ex-wife's car loan as co-signer after she declared bankruptcy. His wages were garnished to pay off the \$5,600 loan. He also paid \$8,000 in back taxes for tax years 2009 and 2010. Applicant represented that he was paying some of his debts through a repayment agreement. He did not provide a copy of his debt repayment agreement or any proof that he was making payments. Applicant stated that the debt repayment firm he was using went bankrupt and he never received any payment updates from them. He states that he attempted to contact the creditors and, when he finally reached them, he could not afford the payments that the creditors were demanding. Applicant decided to file for Chapter 13 bankruptcy because he believed he had no other choice. He has retained an attorney, paid a retainer, and filing fee for the Chapter 13 action. He attended consumer debts counseling. He has set up a budget and intends to pay \$1,800 a month during the five year Chapter 13 repayment plan.

The Judge concluded: The total amount of Applicant's debt is about \$84,000. The debts became delinquent in late 2009 or 2010 and remain unresolved. The Government established its case and the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. While Applicant states that he enrolled in a debt repayment program, he did not provide a copy of his debt repayment agreement or any proof of payments made to the debt repayment company. At the close of the record, Applicant had not filed for bankruptcy. It is too soon to conclude that the Chapter 13 plan will resolve doubts about Applicant's reliability and trustworthiness considering the length of time that Applicant has encountered financial problems. It is also too soon to conclude that he will meet the terms of the Chapter 13 repayment plan. While

Applicant's financial problems were caused, in part, by factors outside his control, such as reduction in income and a divorce, he has provided no documentation concerning his efforts to address his debts. He gets credit for attending financial counseling in conjunction with his Chapter 13 bankruptcy, and he gets credit for resolving a tax debt and the balance of his ex-wife's automobile loan. However, it is still too soon to conclude that his financial situation is under control. Applicant failed to submit sufficient information or evidence to supplement the record with relevant and material facts that would mitigate the financial considerations security concerns. It is unknown whether Applicant has sufficient income to meet his financial obligations including the payments toward the Chapter 13 repayment plan. The security concerns raised under financial considerations are not mitigated.

Applicant contends that the Judge did not consider all of the evidence in the record, citing to evidence of Applicant's loss of income, the housing market crash of 2010, and his divorce. A Judge is presumed to have considered all the evidence of record. *See, e.g.*, ISCR Case No. 12-01578 at 5 (App. Bd. Sep. 24, 2014). Applicant has not rebutted this presumption. The evidence that Applicant argues the Judge ignored is specifically discussed in his decision. Applicant's citation to favorable evidence is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-00998 at 5 (App. Bd. Mar. 19, 2015).

Applicant argues that because he is trustworthy, loyal to the United States, and has made arrangements or has successfully satisfied some of his debts, the concerns under Guideline F are largely inapplicable. However, evidence of Applicant's ongoing, unresolved debts is sufficient to raise Guideline F concerns. The Directive presumes a nexus between admitted or proven conduct under any of the Guidelines and an applicant's worthiness for a clearance. *See, e.g.*, ISCR Case No. 12-01295 at 3 (App. Bd. Jan 20, 2015). Regarding mitigation, 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). The gravamen of the Judge's decision was the absence of corroborating evidence of Applicant's claims that he was addressing his debts, and the absence of evidence indicating that he was in a financial position to embark upon a meaningful repayment program. Notwithstanding the presence of mitigating circumstances, the Judge concluded that the lack of this evidence prevented him from satisfying his burden of overcoming the Government's concerns. This conclusion is supported by the record.

The Board gives due consideration to the Hearing Office cases that Applicant has cited. However, Hearing Office decisions are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 13-01297 at 2-3 (App. Bd. Mar. 9, 2015).

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. “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