

KEYWORD: Guideline F; Guideline E

DIGEST: Based on the record that was before her, the Judge’s conclusion that Applicant had not demonstrated a track record of financial responsibility and that his financial problems were not fully resolved or under control, despite the discharge in bankruptcy is sustainable. Adverse decision affirmed.

CASENO: 15-01652.a1

DATE: 07/07/2017

DATE: July 7, 2017

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 15-01652
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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 November 22, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On April 29, 2017, after the

considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein denied Applicant's request for a security clearance. Applicant 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 argues that the Judge's adverse decision should be reversed because his debts were discharged in bankruptcy. As an attachment to his appeal brief he includes a credit report which was not part of the record below. The Board cannot consider that new evidence on appeal. Directive ¶ E3.1.29. Applicant's argument does not demonstrate that the Judge's decision is arbitrary, capricious, or contrary to law.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. 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. 15-02692 at 2 (App. Bd. Oct. 26, 2016).

In reaching her adverse decision under Guideline F, the Judge noted that all but one of Applicant's debts had been discharged in bankruptcy. Decision at 2-3. However, she also noted that he had "not acted responsibly, or in a timely manner, to attempt to resolve his delinquent debt," he had incurred a judgment subsequent to the bankruptcy discharge that remained unresolved, and that "at least in late 2014, he was spending substantially more than he earned each month." *Id.* at 4-5. Based on the record that was before her, the Judge's conclusion that Applicant had not demonstrated a track record of financial responsibility and that his financial problems were not fully resolved or under control, despite the discharge in bankruptcy is sustainable. *See, e.g.*, ISCR Case No. 14-01243 at 3 (App. Bd. Jun. 18, 2015)(Even if an applicant has actually paid his debts, a Judge may still consider the circumstance underlying the debts for what they may reveal about the applicant's eligibility for a clearance).

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision under Guideline F is arbitrary, capricious, or contrary to law. Moreover, Applicant has not challenged the Judge's adverse decision as to the Guideline E allegations. "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).

**Order**

The decision is AFFIRMED.

Signed: Michael Ra'anan  
Michael Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: James F. Duffy  
James F. Duffy  
Administrative Judge  
Member, Appeal Board

Signed: Williams S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board