

KEYWORD: Guideline F

DIGEST: The Judge based his adverse decision in large part on the fact that Applicant had provided no documentation or details concerning his Chapter 7 bankruptcy proceedings, his monthly income and expenses, his family’s current finances, or his residual tax debt issues. The Board has previously noted that it is reasonable to expect applicants to present that type of corroborating documentation. Adverse decision affirmed.

CASENO: 15-07062.a1

DATE: 11/21/2017

DATE: November 21, 2017

In Re:)	
)	
-----)	ISCR Case No. 15-07062
)	
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 June 15, 2016, 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 decision on the written record. On July 18, 2017, after considering the record, Defense Office of Hearings

and Appeals Administrative Judge Braden M. Murphy 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, he argues that the Judge gave insufficient consideration to his evidence of bankruptcy, loss of income, and the timing of the selling of his residence, which resulted in him and his wife exhausting their savings, falling behind on bills, and using money from their 401K that in turn resulted in a large tax bill once they were fully employed again. Applicant's Brief at 1. As part of his submission on appeal, he offers new evidence in the form of a narrative statement concerning his current financial circumstances, a residential sales contract, and copies of emails. 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. 15-08130 at 2 (App. Bd. Aug. 3, 2017).

In this case, the Judge specifically considered the matters that Applicant raises on appeal. Decision at 2, 3, 4, 6 and 7. While the Judge acknowledged Applicant's and his wife's unemployment were circumstances beyond their control, he based his adverse decision in large part on the fact that Applicant had provided no documentation or details concerning his Chapter 7 bankruptcy proceedings, his monthly income and expenses, his family's current finances, or his residual tax debt issues. *Id.* at 7. The Board has previously noted that it is reasonable to expect applicants to present that type of corroborating documentation. *See, e.g.*, ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010). It is an applicant's job to present evidence sufficient to mitigate the concerns raised in his or her case, and the applicant bears the ultimate burden of persuasion that he or she should be granted a clearance. Directive ¶ E3.1.15. *See, e.g.*, ISCR Case No. 14-02806 at 3 (App. Bd. Sep. 9, 2015). In light of the foregoing, the Judge's finding that there was insufficient evidence to conclude that Applicant's financial issues were unlikely to recur and they do not cast doubt on his currently reliability, trustworthiness, and good judgement is sustainable. Decision at 7.

Applicant also requests that the Board grant him a hearing. Appeal Brief at 2. Applicant had the opportunity to elect a hearing. Instead, he requested that his case be decided on the written record and filed a documentary response to the government's File of Relevant Material (FORM). Nothing in the record below indicates that Applicant was effectively precluded from presenting evidence on his own behalf, and his failure to take better advantage of his rights under the Directive does not constitute a denial of those rights. *See, e.g.*, ISCR Case No. 01-20579 at 3 (App. Bd. Apr. 14, 2004). The Board's authority is derived from the Directive, which does not authorize it to hold

oral arguments. *See, e.g.*, ISCR Case No. 09-01321 at 2 (App. Bd. Feb. 17, 2010).

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: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board