

KEYWORD: Guideline F

DIGEST: Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Applicant had not sought financial counseling and “[n]o information was provided regarding the current status of the SOR debts or her current financial condition.” Adverse decision affirmed.

CASENO: 15-08130.a1

DATE: 08/03/2017

DATE: August 3, 2017

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 15-08130
---	---------------------------------	------------------------

**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 14, 2016, 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 decision on the written record. On May 31, 2017, after the considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Gregg A. Cervi 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 her debts were the result of circumstances beyond her control (*e.g.*, medical problems and unemployment), and she has an excellent employment record and has held a clearance for 20 years without incident. In the alternative, she asks that the Board grant her a waiver or conditional clearance. The Board does not have authority to grant waivers, or interim, conditional or probationary clearances. *See, e.g.*, ISCR Case No. 14-04289 at 2 (App. Bd. Sep. 9, 2015). 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. 15-01652 at 2 (App. Bd. Jul. 7, 2017).

Applicant elected to have her case decided on the written record, and then did not respond to the government's File of Relevant Material (FORM). Based on the record that was before him, the Judge found Applicant had ten delinquent consumer and medical debts totaling approximately \$23,000. In reaching his adverse decision he specifically considered the fact that Applicant had successfully worked for more than 20 years supporting the Department of Defense as an employee or contractor and had incurred medical debts while unemployed. However, he also noted she had not sought financial counseling and "[n]o information was provided regarding the current status of the SOR debts or her current financial condition." Decision at 2. In light of the foregoing, the Judge's conclusion that "Applicant has not shown that her financial problems are being resolved or are under control" is sustainable. *Id.* at 5.

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. "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: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board