

KEYWORD: Guideline F

DIGEST: Applicant’s arguments amount to a disagreement with the Judge’s weighing of the evidence. It is well established that the presence of some mitigating evidence does not compel the Judge to make a favorable security clearance decision. Adverse decision affirmed.

CASENO: 15-08274.a1

DATE: 06/12/2017

DATE: June 12, 2017

In Re:)	
)	
-----)	ISCR Case No. 15-08274
)	
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 July 11, 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 hearing. On March 24, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Arthur E. Marshall, Jr., denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant is a 57-year-old small business owner. He served in the military, both active and reserve, from 1977 to 2013, including three combat tours. Before the events of September 11, 2001, he was self-employed and financially stable. After 9/11, he was recalled to military service and deployed to the Middle East. His business failed without his guidance. He filed Chapter 7 bankruptcy in 2002 and his debts were discharged in 2003.

In 2007, Applicant purchased a home. When he and his wife were going through a divorce in 2010, the home had depreciated considerably. During the divorce, he bought his wife's interest in the property, transferred assets to her, became responsible for two of the children at home, and had considerable debt.

When the Government shutdown at the end of 2013, Applicant had contracts cancelled and lost his medical insurance. He filed Chapter 13 bankruptcy, which was dismissed for failure to include required documentation. In 2014, his son experienced serious health issues that increased his debt. For a period, he cared for his son 24 hours a day and home-schooled him.

The SOR includes 21 debts totaling about \$100,000.¹ Some of the debts relate to his son's medical care for which he has made some payments. Five debts relate to student loans totaling over \$55,000 that are in a rehabilitation plan for which he makes monthly payments of \$5. He provided evidence of making monthly payments of about \$800 on a child support arrearage, but did not provide proof of making monthly supplemental payments of about \$300. He claimed a \$45,000 mortgage account on a house lost to foreclosure was included in his last bankruptcy, but provided no documentation supporting that assertion. He stated that he made some payments on a \$15,000 legal fee arising from his divorce in 2010, but provided no documentary evidence of such efforts. He failed to provide documentation showing payments on other smaller debts.

Applicant has not received financial counseling. His wife manages the household bills and utilizes a budget. He presently is living within his means while building his company.

The Judge's Analysis

There is no doubt that Applicant sacrificed for his country and family. He is a highly credible small business owner who faced multiple dilemmas impacting his finances, including a recall to active duty, divorce, and his son's medical problems. He exhausted his financial reserves before borrowing what he needed to care for his son. He is making *de minimis* payments under the student loan rehabilitation program. Unfortunately, other efforts were not documented. While it appears he is currently living within his means, there is insufficient documentary evidence of

¹ In his Analysis, the Judge stated Applicant had multiple debts totaling about \$151,000.

progress to conclude the security concerns have been mitigated.

Discussion

Applicant contends that there is no evidence of poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. He disputes that he has an unwillingness to pay his bills and highlights his financial dilemmas as well as his efforts to rebuild his company. His arguments amount to a disagreement with the Judge's weighing of the evidence. It is well established that the presence of some mitigating evidence does not 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 parties disagreement with the Judge's weighing of the evidence, or the 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 14-06686 at 2 (App. Bd. Apr. 27, 2016.) The Judge's whole-person analysis is supportable because Applicant's security-significant conduct was evaluated in light of the entirety of the record evidence. *See, e.g.*, ISCR Case No. 14-02806 at 4 (App. Bd. Sep. 9, 2015).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. "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). *See also* Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

Order

The Decision is **AFFIRMED**.

Signed: William S. Fields _____

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody _____

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy _____

James F. Duffy
Administrative Judge
Member, Appeal Board