

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge found that Applicant had a lengthy history of not meeting financial obligations, including failing to file Federal income tax returns from 2009 to 2012; an IRS garnishment of wages in about 2013 or 2014; a Chapter 7 discharge in bankruptcy in 2011; and a subsequent vehicle repossession and delinquent accounts. In light of the foregoing, the Judge could reasonably conclude that Applicant’s “financial issues are recent and ongoing.” and the evidence “does not completely mitigate the judgement issues raised by Applicant’s failure to comply with the tax laws.” Adverse decision affirmed.

CASENO: 15-08684.a1

DATE: 11/22/2017

DATE: November 22, 2017

In Re:)	
)	
-----)	ISCR Case No. 15-08684
)	
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 May 4, 2016, DOHA 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 hearing. On September 7, 2017, after the hearing, Defense

Office of Hearings and Appeals Administrative Judge Edward W. Loughran denied Applicant's request for a security clearance.¹ 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 as to the Guideline F allegations is based on the fact that Applicant was an "enthusiast of a certain car model"—a conclusion that "is not altogether correct." As part of his submission on appeal, he offers new evidence in the form of a statement providing correct information where he "inadvertently answered a question incorrectly with regard to [his] tax situation." The Board cannot consider this new evidence on appeal. *See* Directive ¶ E3.1.29.

The Judge found that Applicant had a lengthy history of not meeting financial obligations, including failing to file Federal income tax returns from 2009 to 2012; an IRS garnishment of wages in about 2013 or 2014; a Chapter 7 discharge in bankruptcy in 2011; and a subsequent vehicle repossession and delinquent accounts. Decision at 2, 3, 5, and 6. In light of the foregoing, the Judge could reasonably conclude that Applicant's "financial issues are recent and ongoing," and the evidence "does not completely mitigate the judgment issues raised by Applicant's failure to comply with the tax laws." *Id.* at 6-7.

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. 14-01918 at 2 (App. Bd. Jul. 8, 2015).

The Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying circumstances and considered the possible application of relevant conditions and factors. He found in favor of Applicant with respect to some of the allegations, but reasonably explained why the mitigating evidence was insufficient to overcome all of the government's security concerns. 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.

¹The Judge's favorable findings under Guideline E are not at issue on appeal.

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