

KEYWORD: Guideline F

DIGEST: The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. An applicant's disagreement with the Judge's weighing of evidence, or 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. Adverse decision affirmed.

CASE NO: 15-04640.a1

DATE: 01/24/2017

DATE: January 24, 2017

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 15-04640
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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 January 29, 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 October 19, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson denied Applicant's request for a security

clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge's findings of fact contained error and 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**

The SOR alleged five delinquent debts. Applicant admitted each of the five allegations. The Judge found in favor of Applicant on two allegations and they are not at issue on appeal. Two other allegations relate to the foreclosure on Applicant's home and the resulting indebtedness exceeding \$40,000 which he attributes to his separation and subsequent divorce from his first wife. The final allegation involves a delinquent medical debt.

### **The Judge's Analysis**

Applicant experienced financial hardship in 2007 when he and his first wife separated, and the cost of maintaining two households became unaffordable. However, Applicant had other priorities besides paying his bills. Applicant took a vacation when he could have used the funds to make mortgage payments. Applicant allowed his house to be foreclosed upon in 2010; the second mortgage on it still remains outstanding because he cannot afford to pay it; and he is waiting for the debt to drop off his credit report. The Judge found that Applicant's history of excessive debt without sufficient mitigation demonstrates a pattern of unreliability. Applicant's financial situation is tight even without addressing his delinquent debts. The Judge concluded that Applicant failed to establish that he is financially responsible.

### **Discussion**

Applicant contends that the Judge should have found his security concerns mitigated. He states that the conditions that led to his financial difficulties were his divorce and the subsequent collapse of the housing market. He states that these conditions were largely out of his control. He states that he tried to work with the mortgage company to refinance his loan or come up with other options. However, he states that after not reaching any agreement, his only option was foreclosure.

The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. *See, e.g.*, ISCR Case No. 11-11455 at 2 (App. Bd. Feb. 4, 2014). An applicant's disagreement with the Judge's weighing of evidence, or 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. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

Applicant argues that the Judge erred in her finding of fact with regard to the status of a debt in the amount of \$442.00 listed under subparagraph 1.d. of the SOR. Applicant asserted at the hearing and asserts on appeal that he has made two payments of \$100.00 to the creditor for this debt. At the hearing, he provided evidence in the form of his bank statement that he made these two payments. The Judge references the bank statement submitted into evidence by Applicant, and

states “Applicant states that as of May 31, 2016, the balance has increased to \$2,506.28.” Decision at 3. Applicant correctly points out that the bank statement reflects his checking account balance as \$2,506.28, after making the two \$100.00 payments. The \$2,506.28 is not the amount he owes on the debt. Applicant Exhibit (AE) C. Given this evidence, there is no basis for the Judge to conclude that Applicant’s debt increased from \$442.00 to \$2,506.28. However, Applicant’s debt is still outstanding. Although the allegation involves a debt of \$442.00, Applicant’s total delinquent debt exceeds \$40,000.00. Thus, this error would not reasonably be likely to change the outcome of the case, given the extent of the total debt. The Board concludes that considering the entire record, this error is harmless.

The Judge examined the relevant data 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.C. 518, 528 (1988).

### **Order**

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra’anan  
Michael Y. Ra’anan  
Administrative Judge  
Chairperson, Appeal Board

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

Signed: Catherine M. Engstrom  
Catherine M. Engstrom  
Administrative Judge  
Member, Appeal Board