

KEYWORD: Guideline F

DIGEST: Applicant states that he “cannot point out any factual errors that have been made by the Administrative Judge” but “ask[s] that more weight be taken in considering [his] work record for nearly 34 years.” The Board’s authority to review a case is limited to cases in which the appealing party has alleged the Judge committed harmful error. It does not review a case de novo. Adverse decision affirmed.

CASENO: 16-01937.a1

DATE: 01/16/2018

DATE: January 16, 2018

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In Re:	)	
	)	
-----	)	ISCR Case No. 16-01937
	)	
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 October 10, 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 October 19, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Elizabeth M. Matchinski denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant requested that his case be decided on the written record and filed only a one-page narrative response to the government’s File of Relevant Material (FORM). The Judge based her adverse decision in large measure on the lack of documentation to substantiate his assertion that he has been working to resolve his delinquent debts.<sup>1</sup> Decision at 9-10. On appeal, Applicant offers new evidence in the form of medical treatment and billing documents. The Board cannot consider this new evidence on appeal. See Directive ¶ E3.1.29.

In his appeal brief Applicant states that he “cannot point out any factual errors that have been made by the Administrative Judge” but “ask[s] that more weight be taken in considering [his] work record for nearly 34 years.” The Board’s authority to review a case is limited to cases in which the appealing party has alleged the Judge committed harmful error. It does not review a case *de novo*. See, e.g., ISCR Case No. 15-08349 at 2 (App. Bd. Dec. 4, 2017).

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. 15-08684 at 2 (App. Bd. Nov. 22, 2017).

In reaching her adverse decision, the Judge specifically noted that “Applicant’s many years of service, primarily as a civilian contractor on behalf of the military, weighs in his favor.” Decision at 10. However, she also noted that: “In choosing a decision on the written record, it was incumbent on Applicant to present the income and expense information to explain his delinquencies, but also to reflect his financial stability. His evidence falls short of meeting his burden of overcoming the financial considerations security concerns.” *Id.* After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for her decision. “The general standard is that a clearance may be granted only when ‘clearly consistent with the

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<sup>1</sup>“He provided no documentation showing ongoing payments and so it cannot be determined whether he has made enough progress to conclude that his debts are likely to be resolved in the near future.” Decision at 9.

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 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