

KEYWORD: Guideline F

DIGEST: 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. 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*. Adverse decision affirmed.

CASENO: 17-03049.a1

DATE: 05/15/2018

DATE: May 15, 2018

In Re:)	
)	
-----)	ISCR Case No. 17-03049
)	
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 September 13, 2017, 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 February 26, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Caroline E. Heintzleman denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The Judge’s Findings and Conclusions

The SOR alleged that Applicant had failed to file Federal and state taxes in multiple years and that he had three delinquent debts. Applicant admitted to all of the allegations. In response to the SOR he provided proof he had begun to resolve some of his tax issues and had made payment on at least one of the debts alleged. The Judge determined that there was insufficient evidence to establish Applicant acted responsibly to address his debts or tax filing deficiencies.

Discussion

Applicant states that any difficulties he has had with his finances in the past were due to periods of unemployment, his divorce, and his child custody and support obligations. With his brief he provides the Notice of Emancipation for his oldest child, a payment receipt, and IRS documents.¹ He asserts that there is no issue of lack of responsibility on his part. The Board construes these arguments to mean that there were mitigating factors in the case that supported a favorable clearance decision.

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. *See, e.g.*, ISCR Case No. 14-03641 at 4 (App. Bd. Apr. 17, 2015). 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. 06-25157 at 2 (App. Bd. Apr. 4, 2008). 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*. *See, e.g.*, ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). 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. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Applicant's appeal brief essentially argues for an alternate interpretation of the record evidence.

The Judge examined the relevant evidence and articulated a satisfactory basis for the decision. A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax

¹ Applicant’s appeal brief contains documents that were not previously submitted to the Judge. Those documents constitute new evidence that the Appeal Board can neither receive nor consider. *See*, Directive ¶ E3.1.29.

returns and paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. *See, e.g.*, ISCR Case No. 15-02884 at 3 (App. Bd. Apr. 26, 2018). The Judge's 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, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Order

The decision of the Judge is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Charles C. Hale
Charles C. Hale
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board