

KEYWORD: Guideline F

DIGEST: At the time the case was submitted for decision Applicant still had delinquent debts. The Judge could reasonably conclude Applicant's financial problems were still ongoing. Adverse decision affirmed

CASENO: 06-23607.a1

DATE: 04/16/2008

DATE: April 16, 2008

In Re:)	
)	
-----)	
)	ISCR Case No. 06-23606
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 2, 2007, DOHA 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 that the case be decided upon the written record. On January 16, 2008, after considering the record, Administrative Judge Kathryn M. Braeman denied Applicant’s request for a security clearance. 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 unfavorable security clearance decision is arbitrary, capricious, or contrary to law.

Applicant argues that the Judge’s adverse decision should be reversed because the Judge did not give sufficient weight to Applicant’s mitigating evidence which he contends shows that he has made sufficient progress in settling his outstanding debts to justify the granting of a security clearance. The Board does not find Applicant’s argument persuasive.

Applicant requested that his case be decided upon the written record. He filed a four-page response to the government’s file of relevant material (FORM) which indicated that he had paid off the debts listed in SOR paragraphs 1(b) and 1(c). The Judge found in favor of Applicant as to those two debts. On appeal, Applicant presented new evidence which indicates that he is working with a law firm to settle his remaining debts and has allocated \$4,500 for that purpose. The Board may not consider Applicant’s new evidence on appeal. *See* Directive ¶ E3.1.29. Its submission does not demonstrate error on the part of the Judge. *See, e.g.*, ISCR Case No. 06-00799 at 2 (App. Bd. Apr. 16, 2007).

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. 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*. An applicant’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.

In this case, the Judge found that Applicant had a lengthy and serious history of not meeting financial obligations. At the time the case was submitted for decision, Applicant still had delinquent debts and was still in the process of resolving his financial problems. In light of the foregoing, the Judge could reasonably conclude that Applicant’s financial problems were still ongoing. *See, e.g.*, ISCR Case No. 05-07747 at 2 (App. Bd. Jul. 3, 2007). The Judge weighed the limited mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct and considered the possible application of relevant mitigating conditions and whole person factors. The Judge found in favor of Applicant with respect to some of the SOR allegations. However, the Judge reasonably explained why the evidence which Applicant had presented in mitigation was insufficient to overcome all the government’s security concerns. The Board does not review a case *de novo*. The favorable record 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. 06-11172 at 2-3 (App. Bd. Sep.

4, 2007). Given the record that was before her, the Judge's ultimate unfavorable security clearance decision under Guideline F is sustainable.

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

Signed: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, Appeal Board

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