

KEYWORD: Guideline F

DIGEST: The challenged findings of fact are supported by substantial record evidence. The Judge reasonable explained why the mitigating evidence was insufficient to overcome the government's security concerns. Adverse decision affirmed.

CASENO: 04-12761.a1

DATE: 03/09/2007

DATE: March 9, 2007

In Re:	)	
	)	
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SSN: -----	)	ISCR Case No. 04-12761
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 20, 2005, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations), pursuant to Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive).

Applicant requested a hearing. On June 30, 2006, after the hearing, Administrative Judge John Grattan Metz, denied Applicant's request for a security clearance. Applicant submitted a timely appeal pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge performed a sufficient whole person analysis; whether the Judge's unfavorable decision is arbitrary, capricious, or contrary to law, in that Applicant had paid off most of his debts or, in one case, made payment arrangements; and whether the Judge's statement that "Applicant adds new delinquent accounts even as he struggles to pay debts that are older" is not supported by record evidence.<sup>1</sup>

## II. Whether the Record Supports the Administrative Judge's Factual Findings

### A. Facts

The Judge made the following findings: Applicant has a history of financial difficulties dating back to the early 1990s. Although Applicant's financial problems were exacerbated by his divorce, they predated that event. By March 2005, Applicant "had still not resolved [his] debts. In some instances, he had not yet been in contact with the creditors. In others, he claimed to have been in contact as long ago as August 2003, but did not follow up on his original contacts when the creditors did not respond."

Applicant had paid some of the debts listed in the SOR and provided evidence that he was attempting to settle some of the debts. However, Applicant's claims that he was in active negotiation with creditors were not corroborated. After the hearing, Applicant did demonstrate that he had entered into settlement agreements with some of the creditors listed in the SOR. "Applicant testified that he had no budget and had undertaken no financial counseling. He claimed to have about \$600 per month positive cash flow with which to address his debts."

### B. Discussion

The Appeal Board's review of the Administrative Judge's finding of facts is limited to determining if they are supported by substantial evidence—such relevant evidence as a reasonable mind might accept as adequate to support such a conclusion in light of all the contrary evidence in the record." Directive ¶ E3.1.32.1. "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620-21, 86 S. Ct. 1018, 16 L. Ed. 2d 131 (1966)). In evaluating the Administrative Judge's finding, we are required to give deference to the Administrative Judge's credibility determinations. Directive ¶ E3.1.32.1. The Board has examined the record and concludes that the challenged finding is supported by substantial evidence.

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<sup>1</sup>Although this statement by the Judge appears in the Conclusions section of the decision, we are treating it as a factual finding for purposes of this appeal.

## Whether the Record Supports the Administrative Judge's Ultimate Conclusions.

An Administrative Judge is required to “examine the relevant data and articulate a satisfactory explanation for” the decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Appeal Board may reverse the Administrative Judge’s decision to grant, deny, or revoke a security clearance if it is arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. Our scope of review under this standard is narrow and we may not substitute our judgment for that of the Administrative Judge. We review matters of law *de novo*.

In this case, the Judge found that Applicant had a lengthy history of not meeting financial obligations. At the time the case was submitted for decision, Applicant still had unpaid debts and had only recently taken action to resolve his financial problems. In light of the foregoing, the Judge reasonably concluded that Applicant’s financial problems were still ongoing. *See* ISCR Case No. 03-26213 at 2 (App. Bd. Aug. 23, 2006). The Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct, and considered the possible application of relevant mitigating conditions. 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 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. 02-28041 at 4 (App. Bd. June 29, 2005). A Judge is not required to discuss each and every piece of record evidence. *See* ISCR Case No. 02-29608 at 4 (App. Bd. Dec. 17, 2003). Given the record that was before him, the Judge’s ultimate unfavorable clearance decision under Guideline F is sustainable. Thus, the Judge did not err in denying Applicant a clearance.

**Order**

The Judge's decision denying Applicant a security clearance is AFFIRMED.

Signed: Jean E. Smallin

Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board