

KEYWORD: Guideline F

DIGEST: The Judge found Applicant had a history of not meeting his financial obligations and still had five delinquent debts, The Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable or vice versa. Adverse decision affirmed.

CASENO: 06-11721.a1

DATE: 02/15/2008

DATE: February 15, 2008

In Re:)	
)	
-----)	ISCR Case No. 06-11721
)	
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 23, 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 a hearing. On October 9, 2007, after the hearing, Administrative Judge LeRoy F. Foreman 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 clearance decision under Guideline F is arbitrary, capricious, or contrary to law.

Applicant contends that the Judge should have concluded that the security concerns raised by his multiple unpaid debts had been mitigated. In support of that contention, Applicant argues that his financial problems were the result of circumstances beyond his control, loss of employment and a divorce, and that he is disputing one of the debts. Applicant’s arguments do not demonstrate that the Judge erred.

The application of disqualifying and mitigating conditions does not turn simply on a finding that one or more of them apply to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole. *See, e.g.*, ISCR Case No. 06-09462 at 2-3 (App. Bd. Jul. 19, 2007). Thus, 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*. *See, e.g.*, ISCR Case No. 05-03452 at 3 (App. Bd. Jul. 3, 2007). 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 that 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. 05-07747 at 2 (App. Bd. Jul. 3, 2007).

Applicant has not met his burden of demonstrating that the Judge erred in concluding that the security concerns raised by Applicant’s unpaid debts had not been mitigated. Although Applicant strongly disagrees with the Judge’s conclusions, he has not established that those conclusions are arbitrary, capricious, or contrary to law. *See* Directive ¶ E3.1.32.3.

In this case, the Judge found that Applicant had a history of not meeting financial obligations which extended over many years. At the time the case was submitted for decision, he still had five delinquent debts totaling approximately \$10,000, and was still in the process of trying to resolve his financial problems. In light of the foregoing, the Judge could reasonably conclude that Applicant’s financial problems were still ongoing and presented a security concern. *See, e.g.*, ISCR Case No. 06-00799 at 2 (App. Bd. Apr. 16, 2007). 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 and whole-person factors. He reasonably explained why the evidence which Applicant had presented in mitigation was insufficient to overcome all of 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. Jun.

29, 2005). Given the record that was before him, the Judge's ultimate unfavorable clearance decision under Guideline F is sustainable.

Order

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

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

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