

KEYWORD: Guideline F

DIGEST: Applicant contends that the Judge did not consider information which Applicant submitted to the investigator in her case. The Judge's decision was based entirely on the File of Relevant Material (FORM). Applicant received a copy of the FORM and had the opportunity to submit materials to refute, extenuate, or mitigate the information in the FORM. Applicant could have resubmitted any materials she gave to the investigator which were not in the FORM when she received it. Applicant did not respond to the FORM. Applicant has not demonstrated error on this issue. Adverse decision affirmed.

CASENO: 06-18694.a1

DATE: 02/21/2008

DATE: February 21, 2008

In Re:)	
)	
-----)	ISCR Case No. 06-18694
)	
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 December 14, 2006, DOHA issued a statement of reasons 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 18, 2007, after reviewing the record, Administrative Judge Noreen A. Lynch denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge’s decision is arbitrary, capricious, or contrary to law.

In her appeal, Applicant contends that the Judge should have given more consideration to the mitigating evidence Applicant supplied as to her personal circumstances and her efforts to repay her debts. Applicant maintains that she submitted paperwork to an investigator in February 2006 which was not included in the file of relevant material (FORM).

In her appeal brief, Applicant restates her personal circumstances at the time her financial problems arose, but adds some personal information which was not part of the FORM, including more recent efforts to pay off her debts. The Board is unable to consider the additional personal and financial information that was not part of the FORM, because the Board cannot consider new evidence. *See* Directive ¶ E3.1.29.

Applicant contends that the Judge did not consider information regarding payment plans between Applicant and her creditors, which Applicant submitted to the investigator in February 2006. The Judge’s decision was based entirely on the FORM. In August 2007, Applicant received a copy of the FORM and had the opportunity to submit materials to further refute, extenuate, or mitigate the information in the FORM. At that time, Applicant could have resubmitted any materials she gave to the investigator which were not in the FORM when she received it. Applicant did not respond to the FORM. Applicant has not demonstrated error on this issue.

Applicant argues that the Judge should have concluded that her financial situation was mitigated. However, the application of disqualifying or 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. 06-12032 at 2 (App. Bd. Oct. 30, 2007). Thus, 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. 05-02833 at 2 (App. Bd. Mar. 19, 2007). 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. *See, e.g.*, ISCR Case No. 05-03143 at 3 (App. Bd. Dec. 20, 2006).

In her decision, the Judge refers to Applicant's personal circumstances and to the comments Applicant made about her financial situation in response to DOHA Interrogatories in October 2006. The Judge explained why Applicant's evidence of mitigation was not sufficient to overcome the government's security concerns. The Judge's decision is sustainable.

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael D. Hipple
Michael D. Hipple
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