

KEYWORD: Guideline F

DIGEST: The Judge found that there was no evidence of any payment on ten out of fourteen debts listed in the SOR and that the full amount of these debts was still owing. The Judge also found that while Applicant had begun the process of resolving the overdue debts, little evidence had been offered to establish that the debts had been resolved or even reduced. The Judge concluded that the financial concerns established in the case were unmitigated. The Judge's findings and conclusions are supported by the evidence. Adverse decision affirmed.

CASENO: 06-21819.a1

DATE: 08/13/2009

DATE: August 13, 2009

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In Re:	)	
	)	
-----	)	ISCR Case No. 06-21819
	)	
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 March 12, 2009, 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 his case be decided on the written record. On June 17, 2009, after considering the record, Administrative Judge Martin H. Mogul denied Applicant’s request for a security clearance. Applicant 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. For the following reasons, the Board affirms the Judge’s unfavorable decision.

Some of Applicant’s assertions on appeal rely on matters not contained in the record below. As such, the assertions are based on new evidence. The Board cannot consider new evidence on appeal. Directive ¶ E3.1.29.

The Judge found that there was no evidence of any payment on ten of fourteen overdue debts listed in the SOR,<sup>1</sup> and that the full amount of these debts was still owing. The Judge also found that three other overdue debts had outstanding balances despite some evidence of payments, and one debt was disputed. The Judge additionally found that Applicant had been in contact with many of the creditors to work out methods for repayment. The Judge concluded that while Applicant had begun the process of resolving the overdue debts, little evidence had been offered to establish that any of the debts had been resolved or even reduced. The Judge also concluded that it is too soon to make a determination that Applicant will follow through on his agreements to resolve his debts. Therefore, the Judge found the financial concerns unmitigated.

On appeal, Applicant argues that he has made every effort to show his willingness to satisfy his debts, and has made some reductions since 2005. He also states that conditions resulting in his financial problems were largely beyond his control, such as loss of employment, court expenses and a relationship separation. These assertions do not establish error on the part of the Judge.

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. 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).

In this case, the Judge weighed the mitigating evidence offered by Applicant against the

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<sup>1</sup>The SOR actually listed 16 debts, but the Judge found that two debts had been listed twice.

seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. He concluded that the evidence in mitigation was of insufficient strength to overcome the government's security concerns. This conclusion is reasonably supported by the record.

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. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his 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 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). Therefore, 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: Jeffrey D. Billett

Jeffrey D. Billett  
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