

KEYWORD: Guideline F

DIGEST: Applicant’s assertions of his efforts at debt resolution was evidence the Judge was required to consider. However, such evidence does not mandate a favorable decision. Applicant’s arguments are not sufficient to demonstrate that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 12-09590.a1

DATE: 01/15/2016

DATE: January 15, 2016

In Re:)	
)	
-----)	ISCR Case No. 12-09590
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 21, 2015, DoD 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 decision on the written record. On November 15, 2015, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Claude R. Heiny 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. For the following reasons, the Board affirms the Judge's unfavorable decision.

The Judge made the following findings of fact: Applicant is 43 years old. In 2004, he was unemployed for a period of about six months. Prior to 2011, Applicant used his good credit to obtain credit cards which were used to obtain money to purchase real estate. Real estate was to be purchased with the cards with the hope of reselling it. However, after ten months and \$100,000 of charges on the cards, the individual who had promised to repay the amounts on the credit cards stopped paying and disappeared. Applicant asserts that the creditors offered to settle the debt for \$40,000, but there was no documentation provided for an offer, for acceptance of the offer, or for payments made in accord with an agreement. In 2007 Applicant purchased real estate for approximately \$120,000. It was for rental property in a different state. He was unable to make the mortgage payments when his renters stopped paying the rent. In 2010 he stopped making payments on the property when he was informed it was going to foreclosure. A 2012 credit report indicated that approximately \$132,000 was owed on the property.

Applicant has asserted that he would like to do a deed in lieu of foreclosure to address his mortgage delinquencies. Failing that he would like to start tendering his original monthly mortgage payments. There is no documentation to indicate Applicant informed the lender of these proposals. At one point Applicant was working with a debt settlement company on his delinquent credit card debt, but the company went out of business after he made one payment, and no money was forwarded to the creditors. In 2012, Applicant acknowledged the past due mortgage debt and two charged-off credit card accounts in the amounts of about \$10,000 and \$4,000 respectively. However, after the issuance of the SOR, he was asserting that he was the victim of identity theft and that the debts were not his. Applicant asserts that he has sought counseling from several financial companies, but he has failed to indicate what services the companies provided him or what information he obtained from the counseling received.

A 2012 credit report lists the delinquent mortgage and the two charged-off accounts, but also lists 40 accounts as being or as having been "Paid as Agreed."

The Judge reached the following conclusions: None of the mitigating factors for financial considerations extenuate the security concerns. Applicant's financial difficulties are both recent and multiple. All that he presented in mitigation was that he intended to offer a deed in lieu of foreclosure or start making regular mortgage payments on his overdue mortgage. He provided no documentation that his desire solidified into any kind of concrete action. Applicant was given sufficient opportunity to address his financial delinquencies. Failing to pay the debts casts doubt on his current reliability, trustworthiness, and good judgment. He provided no evidence he has received financial counseling. He has not demonstrated that his financial problems are under control or that he has a plan to bring them under control. There is little evidence showing factors beyond his control. Applicant failed to provide the required documented proof to substantiate the basis of his dispute regarding the two charged-off accounts. By relying solely on the explanation in his

response to the File of Relevant Material filed by the Government, he failed to mitigate the financial considerations security concerns.

Applicant raises a concern that the Judge made a finding about a period of unemployment he experienced in 2004. He notes that being unemployed was not one of the concerns listed on the SOR, and he questions the relevance of this finding to his case. Regarding Applicant's unemployment being a security concern, there is nothing in the Judge's decision to indicate that he treated it as such. In terms of relevance, Applicant's unemployment, albeit somewhat dated, was something the Judge was entitled to consider, along with other aspects of Applicant's employment history, especially under the whole-person concept. The Judge's only use of the information about Applicant's unemployment came in his analysis of matters in mitigation. The Judge's conclusion that the period of unemployment was too old to have had an effect on Applicant's current debt status merely precluded the use of the information to support a matter in mitigation, as opposed to considering the fact of unemployment as a disqualifying factor. Applicant has not demonstrated error on the part of the Judge.

Applicant states that the SOR "asked [him] to address" four items when in reality there were only three. The Board notes that the Judge acknowledged that the mortgage obligation listed at SOR 1.a. and 1.d. were the same obligation. He subsequently found for Applicant on SOR 1.d.

Applicant questions the Judge's finding that he stopped making payments on his mortgage obligation in 2010, stating that he instead stopped making the payments in 2008. After a review of the record, the Board concludes that there is adequate support in the record for the Judge's finding. Moreover, even if the Judge had erred on this point, a two year discrepancy regarding when Applicant stopped making payments on his mortgage would not have changed the Judge's ultimate disposition of the case. *See, e.g.*, ISCR Case No. 15-01184 at 3 (App. Bd. Dec. 24, 2015).

Applicant cites to a recent credit report and asserts that credit card debt listed therein does not match the credit card information in the SOR allegation. He also states that the other credit card debt listed in the SOR cannot be found on the recent credit report.¹ Though his brief is not a model of clarity, Applicant appears to be arguing that because they do not appear on the subsequent report, he no longer owes these debts. After a review of the record, the Board concludes that there was an adequate basis for the Judge to hold that the credit card debts were still outstanding. The 2012 credit report clearly establishes the debts, and Applicant admitted the debts in his security clearance application and in an interview with an investigator. Without more, the absence of the debts from a subsequent credit report is not dispositive of the issue as Applicant bears the burden of establishing mitigation sufficient to overcome the Government's security concerns. This is especially true in this case, where Applicant did not produce evidence establishing that he paid the debts, but instead asserted that he was the victim of identity theft.²

¹There were two credit reports in the Government's evidence, one dated 2012 and the other dated 2014. Applicant's appeal assertions stem from the latter report.

²The Judge noted the inconsistency between Applicant's earlier admissions of liability for the debts and his proffer, beginning with his answer to the SOR, that the debts resulted from identity theft. Decision at 3.

Applicant cites to a comment in Item 3, Personal Subject Interview, to the effect that there is no reason to question his ability or willingness to pay his debts. This represents the interviewer's summary of Applicant's statements during the interview, not the interviewer's opinion of Applicant's financial status or his security eligibility. *See, e.g.*, ISCR Case No. 14-03069 at 3 (App. Bd. Jul. 30, 2015).

Applicant argues that there has been significant improvement in his financial profile since 2012, and he worked hard to address his debts without resorting to bankruptcy. The Board interprets Applicant's assertions as an argument that the Judge should have found the Government's case mitigated. 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). Applicant's assertions of his efforts at debt resolution was evidence that the Judge was required to consider. However, such evidence does not mandate a favorable decision. Applicant's arguments are 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).

Central to the Judge's analysis was his conclusion that Applicant failed to produce sufficient evidence to support the matters in mitigation that he claimed applied to the case, such as assertions that his finances were under control, that he was making good-faith efforts to satisfy the outstanding debts, that he had received financial counseling, and that he had a reasonable basis to dispute the credit card debts. This conclusion is supported by the record.

Applicant asks that he be granted a probationary clearance. We do not have authority to grant such a clearance. *See, e.g.*, ISCR Case No. 14-04289 at 2 (App. Bd. Sep. 9, 2015).

The Board does not review a case *de novo*. After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated 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 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 is sustainable.

Order

The Judge's decision is AFFIRMED.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board