

KEYWORD: Guideline F; Guideline E

DIGEST: The Appeal Board cannot consider new evidence on appeal. Applicant’s significant outstanding debts supported the Judge’s conclusion that the debts were ongoing. Adverse decision affirmed.

CASE NO: 12-11097.a1

DATE: 06/20/2013

DATE: June 20, 2013

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In Re:	)	
	)	
-----	)	ISCR Case No. 12-11097
	)	
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 September 27, 2012, 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). On December 11, 2012, DoD issued an addendum to the SOR adding two additional allegations under Guideline F, and five allegations under Guideline E (Personal Conduct). Applicant requested a hearing. On March 29, 2013, after the close of the record, Defense Office of Hearings and Appeals Administrative Judge Thomas M. Crean 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 adverse clearance decision is arbitrary, capricious or contrary to law.

Applicant contends that the Judge’s adverse decision should be reversed because the evidence was sufficient to establish that he had been making reasonable efforts to resolve his financial problems. As part of his submission on appeal, he offers new evidence in the form of documents and a narrative statement that explain the current status of his debts and his continuing actions to resolve them. The Board cannot consider this new evidence on appeal. *See Directive ¶ E3.1.29.*

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*. 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. 10-08308 at 2 (App. Bd. Nov. 3, 2011).*

In this case, the Judge found that Applicant had a lengthy history of not meeting financial obligations, including substantial unpaid debts for state and Federal tax liens, and past-due mortgage payments. Decision at 2-5. Although Applicant had made some efforts to resolve his financial problems, the Judge noted that those efforts had only started recently and in some instances only involved token payments. *Id.* At 7-8. At the time the case was submitted for decision, Applicant still had significant outstanding debts and was still trying to resolve his financial problems.<sup>1</sup> In light of the foregoing, the Judge could reasonably conclude that those problems were still ongoing. *See, e.g., ISCR Case No. 10-01209 at 2 (App. Bd. Apr. 28, 2011).*

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 conditions and factors. He found in favor of Applicant with respect to some of the allegations, but reasonably explained why the mitigating evidence was insufficient to overcome all of the government’s security concerns. 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. After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his decision. “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 unfavorable security clearance decision under is sustainable.

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<sup>1</sup>Applicant’s brief states that he “needed more time.” The Board notes that at the hearing he stated that he was ready to proceed (Tr. at 6-7), and the Judge accepted additional documents from Applicant about six weeks after the hearing.

**Order**

The decision of the Judge is AFFIRMED.

Signed: Michael Y. Ra'anan  
Michael Y. Ra'anan  
Administrative Judge  
Chairperson, 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