

KEYWORD: Guideline F

DIGEST: Applicant's contains factual assertion not part of the record thus they constitute new evidence which the Board cannot consider. Adverse decision affirmed.

CASENO: 14-00280.a1

DATE: 02/13/2015

DATE: February 13, 2015

In Re:	)	
	)	
-----	)	ISCR Case No. 14-00280
	)	
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 April 17, 2014, 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 based on the written record. On December 12, 2014, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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 security clearance decision.

The Judge made the following findings of fact: Applicant is 37 years old. He admitted SOR allegations stating that he had eight delinquent debts totaling approximately \$31,500. Applicant explained that his financial issues began when he was unemployed from late 2009 to early 2010. The unemployment in conjunction with low paying jobs contributed to his financial issues. He has a number of debts that he hopes to have paid by the end of 2014. Applicant stated that he is making payment arrangements for several debts. However, he did not provide any documentation for the payment plans. Applicant claims to have disputed some accounts, but he did not provide any documentation. Applicant further claims that he has paid off four debts and that two more are in settlement or payment plans, but he provided no proof of payment or other documentation. There is nothing in the record to show Applicant's income or expenses. There is no record of financial counseling.

The Judge reached the following conclusions: Applicant's admissions and credit reports establish the collection accounts, delinquent debts, and judgments. It is left to Applicant to overcome the case against him and mitigate security concerns. Applicant's financial difficulties occurred due to a period of unemployment, but he did not provide any information to show the nexus between that unemployment and the delinquent debts. Applicant made some effort to pay some debts. However, as to the other collection accounts or charged-off accounts, there is no documentation of any payment plan. With the exception of one debt, Applicant did not provide any documentation for the debts he claimed he has paid. Given the ultimate burden, there are not clear indications that his financial problems are being resolved and are under control.

Applicant states that his unemployment caused him difficulties, but once he secured employment in 2013, he established payment arrangements. He listed several debts he claims have either been paid, settled, or are the subject of ongoing payments. He states he has reached out to several other creditors to resolve debts but has not yet made contact. The Board construes Applicant's assertions as a claim that the Judge did not adequately consider these matters in mitigation, and therefore her decision is arbitrary, capricious, and contrary to law.

Applicant's brief contains numerous factual assertions that were not part of the record below. These matters constitute new evidence, which the Board cannot consider. Directive ¶ E3.1.29.

Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the granting or maintenance of a security clearance. *See Dorfmont v. Brown*,

913 F.2d 1399, 1401 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The gravamen of the Judge's decision was that, in response to the Government's case, Applicant claimed to be addressing and/or paying his debts, but he had offered no documentary proof or corroboration to support his claims. 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). The Judge's conclusion that Applicant's evidence was insufficient to overcome the Government's case is sustainable.

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 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 decision of the Judge 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: William S. Fields  
William S. Fields  
Administrative Judge

Member, Appeal Board