

KEYWORD: Guideline F

DIGEST: The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. Adverse decision affirmed.

CASENO: 14-01080.a1

DATE: 04/24/2015

DATE: April 24, 2015

In Re:)	
)	
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)	ISCR Case No. 14-01080
)	
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 July 11, 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 hearing. On February 26, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Thomas M. Crean 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: Applicant is 51 years old. He was unemployed from June 2009 to December 2009 and from July 2011 until September 2012. Applicant has utility, electronic device, telephone, apartment rental, automobile, and student loan debts in the total amount of \$36,000. He has a total monthly income of \$3,250. His net monthly expenses are approximately \$2,635, leaving a net monthly remainder of approximately \$500. He uses his excess funds to visit and buy items for his grandchildren. The first four debts stemmed from Applicant's early departure in 2012 from an apartment he rented. He did not arrange with the company supplying the utilities to turn off the utilities, so he incurred additional expenses until the utilities were terminated. One utility debt was paid in full after the hearing in this matter. Other debts for cable service equipment, his lease, and equipment for his internet service have not been resolved. Applicant is responsible for a car loan he cosigned for his son that was not paid for by his son. The monthly payment on the car loan would be approximately \$700. Applicant did not have sufficient funds to make the payments. The debt is not resolved. Applicant learned that the balance on his student loan debt was \$2,207.40. He reached a settlement agreement with the student loan company, and agreed to make monthly payments of \$5.00 on the loan. The debt will increase to \$2,211.43 when his first \$5.00 payment is due on March 1, 2015. Applicant stated that his plan was to use an income tax refund to pay off the remainder of his student loans. He is current with his taxes but has very few cash assets on hand. He lives from paycheck to paycheck. He does not have a monthly budget and has not received financial counseling.

The Judge reached the following conclusions: Applicant incurred debts when he left an apartment before the end of the lease, incurring additional charges for the lease, utilities, and communications services. He has not paid a car loan he was responsible for as a co-signer. He is not current with payment of his student loans. The evidence indicates a history of both an inability and an unwillingness to satisfy debt. Applicant had been unemployed for some time before breaking the lease, but he was employed in his present job at the time he abandoned the lease. All of his debts are based on his failure to take the action required of him to manage the financial issues. He did not make payments on or seek payment arrangements for his debts until after the hearing. All of his financial issues were within his control to resolve and are likely to recur. He established that he made only one payment on any of his delinquent debts. A promise to pay delinquent debts in the future is not a substitute for a track record of paying debts in a timely manner. Applicant has not

shown that he manages his personal financial obligations reasonably and responsibly. Applicant has not mitigated security concerns based on financial considerations.

Applicant's appeal brief contains representations that are not part of the record below. The Board cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant takes issue with several of the Judge's findings of fact. Some are not germane to the main issues in the case, and call into question the Judge's findings on such matters as how many children Applicant has, and the details of his Navy service. Applicant's assertions concerning these findings do not establish harmful error. Applicant also challenges the Judge's finding that he was gainfully employed at the time he moved out of his apartment and broke his lease in January 2012. The record evidence indicates that Applicant was unemployed in January 2012; thus, the Judge's finding is in error. However, after a review of all the evidence and the Judge's decision, the Board concludes that even if the Judge had not made this factual error, it is not reasonably likely that the outcome of the case would be different. The Judge's error is therefore harmless. *See, e.g.*, ISCR Case No. 03-23829 at 3 (App. Bd. Apr. 27, 2007).

Applicant asserts that the Judge's analysis should focus on his whole life since age 15, including his honorable military service, and not merely the four year time period where he was experiencing financial difficulties. He argues that the Judge's characterization of his financial conduct as "irresponsible" when he suffered a period of unemployment and satisfied numerous debts on time, was unfair. Applicant's statements fail to 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. *See, e.g.*, ISCR Case No. 06-25157 at 2 (App. Bd. Apr. 4, 2008). 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).

Applicant's appeal brief essentially argues for an alternate interpretation of the record evidence.

In this case, the Judge made sustainable findings that Applicant had a history of not satisfying a significant number of his debts. The record supports the Judge's findings that Applicant still owes significant amounts of delinquent debt, has paid only one debt, and has not established a reasonable and reliable plan to resolve his financial problems. A review of the Judge's decision reveals that, regarding Guideline F, the Judge listed the potentially applicable mitigating conditions and then discussed several components of those factors in his analysis. However, the Judge offered a narrative explanation as to why the disqualifying conduct under Guideline F was not fully mitigated. Applicant has not demonstrated that the Judge erred when he weighed the mitigating evidence against the seriousness of the disqualifying conduct.

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