

KEYWORD: Guideline F

DIGEST: Applicant's efforts to repay debts were insufficient when viewed of the extent of his delinquent debt. Adverse decision affirmed.

CASENO: 07-05352a1

DATE: 07/16/2008

DATE: July 16, 2008

In Re:))	
-----))	ISCR Case No. 07-05352
))	
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 December 6, 2007, 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 the case be decided on the written record. On April 10, 2008, after considering the record, Administrative Judge Mark W. Harvey denied Applicant's request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

Applicant argues that the Judge's adverse decision should be reversed because the Judge did not give sufficient weight to Applicant's mitigating evidence which established that he had entered into a repayment plan for his outstanding debts. Applicant's argument does not demonstrate that the Judge erred.

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th 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 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). 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*. An applicant'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. 06-11172 at 2 (App. Bd. Sep. 4, 2007)*.

In this case, the Judge found that Applicant had a lengthy and serious history of not meeting financial obligations. The SOR alleged eight delinquent debts totaling approximately \$24,000. The Judge found in favor of Applicant as to two of the debts, because one was unsubstantiated and the other could be readily enforced, if necessary. As for the other six debts, the Judge found that, subsequent to the issuance of the SOR and just prior to the submission of the case for decision, Applicant had entered into a repay agreement with each of the creditors, and made a small payment on each debt in furtherance thereof. However, the Judge found against Applicant with respect to those debts, concluding that Applicant's efforts to repay or resolve them had been "... insufficient when compared to available income that he could have used to address his delinquent debts." Decision at 8. In support of that adverse conclusion, the Judge noted that "Applicant became aware of the security significance of his financial problems almost two years ago when an OPM investigator interviewed him concerning his delinquent debts." *Id.*

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 Board does not review cases *de novo*. Accordingly, the Judge's ultimate unfavorable security clearance decision under Guideline F is sustainable.

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Jean E. Smallin

Jean E. Smallin
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