

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant failed to mitigate security concerns arising from \$19,000 worth of delinquent debt and from falsifications on her security clearance application. Adverse decision affirmed.

CASENO: 07-06205.a1

DATE: 08/07/2008

DATE: August 7, 2008

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 07-06205
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**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 October 28, 2007, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) 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 22, 2008, after considering the record, 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 raised the following issue on appeal: whether the Judge’s adverse clearance decision under Guidelines F and E is sustainable.

The Judge found that Applicant had 15 delinquent debts totaling approximately \$19,000. At the time the case was submitted for decision, she was paying on only one of the debts. Decision at 1-2. Additionally, the Judge found that Applicant had deliberately falsified her security clearance application when in response to the question as to whether she had debts that had been delinquent more than 90 days and more than 180 days respectively, she answered “no.” The Judge noted that in her response to the SOR, Applicant had stated that she was so consumed with shame concerning her financial situation that she failed to disclose her debts. *Id.* at 2-3.

On appeal, Applicant requests that the Judge’s adverse decision under Guideline F be reversed because her financial problems had resulted from a period of underemployment after she had left the military. She asks that the adverse decision under Guideline E be reversed based on her favorable character references and military service. Applicant’s arguments do not demonstrate that the Judge erred.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. 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). 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. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In this case, 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 mitigating conditions and factors. He found in favor of Applicant as to one of the SOR allegations. However, the Judge reasonably explained why the evidence which Applicant had presented in mitigation was insufficient to overcome the government’s security concerns. The Board does not review a case *de novo*. The favorable record 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 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)). Therefore, the Judge’s ultimate unfavorable security clearance decision under Guidelines F and E is sustainable.

### **Order**

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Michael D. Hipple  
Michael D. Hipple  
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