

KEYWORD: Guideline F

DIGEST: At the time of the hearing Applicant had a significant outstanding debt in the form of an unresolved judgment. The Judge could reasonably conclude that Applicant's financial problems were ongoing. Adverse decision affirmed.

CASENO: 07-10312.a1

DATE: 07/15/2008

DATE: July 15, 2008

_____)	
In Re:)	
)	
-----)	ISCR Case No. 07-10312
)	
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 November 26, 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 a hearing. On April 30, 2008, after the hearing, Administrative Judge LeRoy F. Foreman 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 it “. . . is based on inconsistent leveraging of the facts/mitigating circumstances in [t]estimony and the factual time lines and sequence of events.” In support of his contention, Applicant summarizes the evidence he presented at the hearing, and argues that it is sufficient to support a favorable decision under the whole-person concept. Applicant has not demonstrated that the Judge erred.

After reviewing the record, the Board concludes that the Judge’s material findings of security concern are supported by “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive ¶ E3.1.32.1. *See also Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620-21 (1966).

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*. *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 found that Applicant had a lengthy history of not meeting financial obligations, including the failure to file federal income tax returns for three years. At the time of the hearing, Applicant still had a significant outstanding debt, in the form of an unresolved judgment for rent, for which he was unable to provide proof of satisfaction. In light of the foregoing, the Judge could reasonably conclude that Applicant’s financial problems were still ongoing. *See, e.g.*, ISCR Case No. 05-07747 at 2 (App. Bd. Jul. 3, 2007). 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 as to some of the SOR allegations. However, he reasonably explained why the mitigating evidence was insufficient to overcome 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. *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 whole-person analysis and his ultimate unfavorable security clearance decision under Guideline F are 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: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board