

KEYWORD: Guideline F

DIGEST: Applicant's admission established the government's case. The burden shifted to Applicant to explain or mitigate the security concerns arising from his financial situation. Adverse decision affirmed.

CASENO: 08-01616.a1

DATE: 07/07/2009

DATE: July 7, 2009

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In Re:)	
)	
-----)	ISCR Case No. 08-01616
)	
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 10, 2008, 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 16, 2009, after the hearing, Administrative Judge Robert C. Wesley denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

On appeal, Applicant raises the following issue: whether the Judge’s decision is arbitrary, capricious, or contrary to law. Specifically, Applicant argues that the government did not meet its burden of proving that he should not be granted a security clearance; and he contends that the Judge committed error in not considering the evidence Applicant submitted and in not giving proper weight to Applicant’s evidence of mitigation. Finding no error, we affirm the Judge’s decision.

The Judge made the following pertinent findings of fact: Applicant was divorced from his first wife in June 2002 and pays child support for a child from that marriage. He remarried in May 2004. Applicant was unemployed between April and June 2004 and between September and December 2006. The periods of unemployment were partially responsible for Applicant’s financial difficulties, including a child support arrearage. Applicant’s financial difficulties were further exacerbated by his care for an ailing parent. Applicant’s debts include credit card accounts, medical bills, the child support arrearage, a number of student loans, and a judgment associated with a car loan. When Applicant was given the opportunity to provide documentation of his efforts to address his outstanding debts, he demonstrated that he had significantly decreased the amount of his child support arrearage and consolidated his student loans into one account. However, Applicant did not provide evidence that he had resolved or disputed his other delinquent debts.

Applicant argues that the government has not met its burden of proving that he should not be granted a security clearance. Applicant misstates the burden of proof. Under the Directive, the government presents evidence raising security concerns. Then the burden shifts to Applicant to rebut, explain, extenuate, or mitigate the concerns. The ultimate burden of persuasion to obtain a favorable security clearance decision rests with Applicant. *See* Directive ¶ E3.1.15; and ISCR Case No. 06-20062 at 2 (App. Bd. Jul. 15, 2008). In this case, an SOR was issued showing that Applicant owed delinquent debts. In his response to the SOR, Applicant offered explanations of his attempts to resolve some of the debts. For six of the debts, he responded that he had done nothing to resolve them. In effect, Applicant admitted many of the debts and thus established the government’s case. The burden then shifted to Applicant to explain or mitigate his financial difficulties.¹

¹Applicant objects to the fact that the credit report offered into evidence by the government was dated September 2008 and contained information which was outdated by the date of the hearing, February 25, 2009. The record was held open for Applicant to submit, and he did submit, a more recent credit report. In his decision, the Judge referred to the credit report Applicant submitted. Applicant has not demonstrated error in this regard.

Applicant also contends that the Judge did not consider the evidence he submitted and did not give proper weight to his evidence of mitigation. When the record was held open after the hearing for Applicant to submit further documentation of his efforts to improve his financial situation, he submitted a letter regarding his involvement at his child's school, pay statements showing deductions pursuant to a court order, information regarding his student loans, and a credit report. Applicant believes that the Judge did not consider that documentation. There is a rebuttable presumption that the Judge has considered all the evidence in a case unless the record clearly demonstrates otherwise; and the Judge is not required to mention or discuss every piece of record evidence. *See, e.g.*, ISCR Case No. 07-18303 at 2 (App. Bd. Nov. 13, 2008). In this case, it is clear that the Judge did consider the information Applicant submitted. In the Analysis section of his decision, the Judge stated that Applicant had taken steps to resolve his child support arrearage and student loans, and the Judge found in Applicant's favor as to the arrearage and all but one of the student loan items in the SOR.² Decision at 5, 6. The Judge specifically referred to the credit report Applicant provided in stating that the fact that some of Applicant's delinquent debts no longer appeared on that credit report did not demonstrate resolution of those debts. *Id.* at 3.

Applicant argues that he has mitigated any security concerns which might exist under Guideline F and that the Judge did not give adequate weight to his evidence of mitigation.³ The application of disqualifying and mitigating conditions and whole-person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. Thus, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security determination. 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*. 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 that 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. 06-23384 at 3 (App. Bd. Nov. 23, 2007).

A review of the record indicates that the Judge weighed the mitigating evidence offered by Applicant against his financial history and considered the possible application of relevant mitigating conditions and factors. The Judge reasonably explained why the evidence 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 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. 08-01105 at 2-3 (App. Bd. Dec. 15, 2008). 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, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168

²Applicant had testified that he had arranged for his multiple student loans to be consolidated into one loan and that the payment amount had been reduced. One of the documents Applicant submitted was related to that transaction.

³Applicant also argues that the Judge did not consider the whole person. The Board notes that the Judge's decision explicitly discusses Applicant's debts in the context of the whole person. Decision at 6.

(1962)). “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Dep’t of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Accordingly, the Judge’s adverse decision is sustainable.

Order

The Judge’s unfavorable security clearance decision is AFFIRMED.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairman, 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