

KEYWORD: Guideline F

DIGEST: Department Counsel is not responsible for presenting evidence in extenuation or mitigation of an applicant’s security concerns. Applicant bears responsibility for presenting his or her case. Adverse decision affirmed.

CASENO: 08-02414.a1

DATE: 06/04/2009

DATE: June 4, 2009

In Re:)	
)	
-----)	ISCR Case No. 08-02414
)	
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 October 31, 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 the case be decided on the written record. On March 27, 2009, after considering the record, Administrative Judge Richard A. Cefola denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: whether Department Counsel assigned to the

case improperly characterized and represented his case to the Judge, and whether the Judge's adverse decision is supported by the record evidence. For the following reasons, the Board affirms the Judge's unfavorable decision.

The Judge found that Applicant acquired ten outstanding past due or charged off debts. The Judge also found that Applicant was unemployed between March and June of 1999, and when he found work again, his pay was substantially less. The Judge acknowledged that this history caused Applicant to have financial difficulties. The Judge concluded that the circumstances under which the debts accumulated did not mitigate the government's security concerns because Applicant has done little to address his very substantial past due indebtedness.

Applicant complains that Department Counsel did not give his financial situation the proper representation that it deserved, and Department Counsel failed to present his financial status from 2003 to the present as being responsible and characterized by the making of on-time payments. Applicant claims some confusion as to what his rights in the process were. Applicant also claims that certain debts were satisfied prior to Department Counsel's submission of the File of Relevant Material (FORM) that constituted the government's case.

Applicant's appeal brief and attachments reference matters that were not made part of the record below. The Board cannot consider new evidence on appeal. Directive, ¶ E3.1.29.

Contrary to Applicant's assertions, Department Counsel was not responsible for presenting evidence wherein Applicant's financial circumstances would be presented in a light that was favorable to him. After the issuance of the SOR, DOHA adjudications are adversarial proceedings. *See, e.g.*, ISCR Case No. 01-10347 at 3-4 (App. Bd. Sep. 17, 2002). In this setting, an applicant is responsible for presenting his or her case. The case file shows that Applicant freely chose to have his case determined without a hearing, was provided a copy of the Directive, and was fully apprised of his right to submit material that he wished the Judge to consider. Applicant did not submit any response to the FORM. The case file also shows that Applicant was informed of his right to be represented by an attorney in the preparation of his response to the government's FORM. This placed him on reasonable notice that he was responsible for presenting his case, and that neither the Judge nor Department Counsel was responsible for assisting him in doing so. Applicant has failed to establish error.

Applicant contends that the Judge did not give adequate weight to matters in mitigation. Applicant's assertion does not demonstrate that the Judge erred. 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 and serious history of not meeting

financial obligations. At the time of the close of the record, Applicant still had substantial delinquent debts. 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 mitigating conditions and whole-person factors. He reasonably explained why the evidence of mitigation was insufficient to overcome the government's security concerns. The Board does not review a case *de novo*. After reviewing the record, the Board concludes that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfs. 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 is sustainable.

Order

The decision of the Judge is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: Michael D. Hipple

Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board