

KEYWORD: Guideline F

DIGEST: Applicant had numerous delinquent debts. He presented evidence of health problems and deaths within his family. However, the Judge reasonably explained why that evidence was not sufficient to mitigate the security concerns in Applicant's case. Adverse decision affirmed.

CASENO: 08-09569.a1

DATE: 01/07/2010

DATE: January 7, 2010

In Re:)	
)	
-----)	ISCR Case No. 08-09569
)	
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 March 27, 2009, 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 October 14, 2009, after the hearing, Administrative Judge LeRoy F. Foreman denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Specifically, Applicant contends that

the Judge should have found the government's security concerns to be mitigated.

The Judge made the following relevant findings of fact: Applicant is 34 years of age. Applicant married for the first time in 1998, at which time his wife was working. Between 1999 and 2005, Applicant and his wife leased or purchased several expensive motor vehicles, accumulating significant debt to do so. Applicant's wife ceased working in 2003, and they divorced in 2006. While Applicant's wife worked, she paid the utilities and one car note. After she stopped working, Applicant was responsible for all their debts. Beginning in 2000, Applicant and his wife received counseling from an elder in their church. The elder advised Applicant to work toward being debt-free. In 2004, Applicant hired an attorney for assistance with one debt. At the time of their divorce, Applicant and his wife surrendered four motor vehicles to their creditors, with each to be responsible for the deficiencies on two vehicles. After his divorce, Applicant refinanced his home in order to carry out his property settlement with his wife. Applicant used some of the equity in the home to pay off one large automobile debt. The mortgage Applicant obtained at that time was an adjustable-rate mortgage. In October 2007, Applicant's mortgage payment increased from \$2,400 to \$3,200 per month, and Applicant was unable to make the increased payments. In September 2007, Applicant contacted a credit and financial counseling service about his financial situation. Following their advice, Applicant surrendered two vehicles to the lien holders, incurring deficiency debts of approximately \$31,000 and \$46,000. Among the debts listed in the SOR, Applicant satisfied a judgment on a credit card debt of \$410 in January 2009. In July 2009, Applicant achieved modification of the first and second mortgages on his home. In August 2009, the month when the hearing was held, Applicant paid two small delinquent telephone bills and established payment plans to repay in the future a credit card debt and the two large automobile deficiencies noted above, as well as another automobile deficiency of over \$41,000. In mitigation of his financial situation, Applicant presented evidence regarding the deaths of his parents and his own health problems, but Applicant did not demonstrate that those matters affected his finances. Applicant has obtained a part-time job as a musician at his church, and his pastor considers him a person of integrity and exemplary moral character.

The Appeal Board's review of the Judge's findings of facts is limited to determining if they are supported by substantial evidence—"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. "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966).

Applicant contends that the Judge did not give sufficient weight to his evidence of 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*. 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 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. 08-10079 at 2 (App. Bd. Dec. 10, 2009)*. In this case, the Judge discussed in detail the mitigating evidence that Applicant presented and explained why it was not sufficient to overcome the government's security

concerns. The Judge's decision is sustainable.

Order

The Judge's decision denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairperson, 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