

KEYWORD: Guideline F

DIGEST: At the time the case was submitted, Applicant still had a significant number of delinquent debts. Thus, the Judge could conclude that the problems were ongoing. The Judge weighed the mitigating evidence against the length and seriousness of the disqualifying conduct and considered the relevant conditions. He found in Applicant's favor as to some of the SOR factual allegations. However, he reasonably explained why the mitigating evidence was insufficient to overcome the government's security concerns. Adverse decision affirmed.

CASENO: 08-06518.a1

DATE: 03/03/2009

DATE: March 3, 2009

_____)	
In Re:)	
)	
-----)	ISCR Case No. 08-06518
)	
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 July 24, 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 that the case be decided on the written record. On December 19, 2008, after considering the record, Administrative Judge Robert J. Tuider 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 the Judge did not give sufficient weight to Applicant’s mitigating evidence. Specifically, Applicant argues that the majority of the 36 debts listed in the SOR were either duplicates or barred by the statute of limitations, and that she has outstanding debts to only 10 creditors totaling approximately \$16,500. She also argues that she has acquired no new debts in the last 5-6 years, except for student loans and taxes owed to the Internal Revenue Service as a result of under-withholding. Finally, Applicant presents new evidence as to debts she has recently arranged to pay. Applicant’s arguments do not demonstrate that the Judge’s decision is arbitrary, capricious or contrary to law.

The Board cannot consider Applicant’s new evidence on appeal. Directive at ¶ E3.1.29. Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. 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. At the time the case was submitted for decision, Applicant still had a significant number of outstanding debts, and was still in the process of trying to resolve her financial problems. In light of the foregoing, the Judge could reasonably conclude that those 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 gave Applicant credit for duplicate debts and found in her favor as to some of the SOR factual allegations.¹ However, he reasonably explained why the mitigating evidence was insufficient to overcome the government’s

¹The Judge found in favor of Applicant as to the debts listed in SOR paragraphs 1(i-j), (n) and (z). Those favorable findings are not at issue on appeal.

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 ultimate unfavorable security clearance decision under Guideline F is sustainable.

Order

The decision of the Judge denying Applicant a security clearance 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