

KEYWORD: Guideline F

DIGEST: The Judge found that Applicant's current total delinquent debt is approximately \$120,000. The Judge acknowledged that some of Applicant's circumstances were beyond his control in creating the delinquencies, but, ultimately, insufficient mitigation had been established owing to the substantial amount of delinquent debt remaining. The Judge's conclusion is reasonably supported by the record. Adverse decision affirmed.

CASENO: 08-07043.al

DATE: 07/21/2009

DATE: July 21, 2009

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

FOR GOVERNMENT

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 17, 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 decision on the administrative record. On May 6, 2009, after considering the record, Administrative Judge Joan Caton Anthony denied Applicant's request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable decision.

The Judge found that Applicant's current total delinquent debt is approximately \$120,000. The Judge also found in Applicant's favor regarding two of the SOR allegations. The Judge acknowledged that some of Applicant's circumstances were beyond his control in creating the delinquencies, but she explained why this fact did not overcome the government's security concerns. A review of the record indicates that the Judge's factual findings are supported by the evidence.

Applicant argues that his situation should have caused the Judge to apply the Guideline F mitigating conditions in his favor. 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). 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. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In this case, the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. She concluded that, notwithstanding the partial applicability of two Guideline F Mitigating Conditions, the evidence in mitigation was of insufficient strength to overcome the government's security concerns. Specifically, the Judge found in Applicant's favor on two of the debts alleged in the SOR based on Applicant's explanations. The Judge ultimately concluded, however, that because of the substantial amount of delinquent debt remaining, Applicant had not established sufficient mitigation to satisfy his burden of overcoming the government's case. This conclusion is reasonably supported by the record.

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

her 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)). “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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