

KEYWORD: Guideline F

DIGEST: The presence of some mitigating evidence does not alone compel the Judge to make a favorable decision. Adverse decision affirmed.

CASENO: 08-07983.a1

DATE: 10/02/2009

DATE: October 2, 2009

_____)	
In Re:)	
)	
-----)	ISCR Case No. 08-07983
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On February 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 that his case be decided on the written record. On June 23, 2009, after the close of 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.

Some of Applicant’s assertions on appeal rely on matters not contained in the record below. As such, the assertions are based on new evidence. The Board cannot consider new evidence on appeal. Directive ¶ E3.1.29.

The Judge found that Applicant had a history of financial difficulties that at least spanned the period from 2001 to 2008. The Judge concluded that several of the delinquencies remained unpaid or unresolved at the time of the closing of the record and that they occurred under circumstances that were likely to recur. The Judge found that most of Applicant’s attempts to pay, settle, or dispute his debts occurred after he received the SOR in February 2009. She found that Applicant has not sought consumer credit counseling that could provide him with strategies for effectively managing his finances and resolving future delinquent debts. The Judge also found that Applicant resolved three longstanding debts totaling approximately \$485, but Applicant instructed a financial management firm he contacted in September 2008 to dispute three debts totaling approximately \$20,533 and has since provided no specific information as to the grounds upon which the debts were disputed. She concluded that it is unclear at this time how these currently unresolved debts might impact Applicant’s future financial stability. The Judge also concluded that Applicant provided conflicting information regarding resolution of his two federal tax liens, and he did not provide documentation to corroborate his assertion that the liens were not his responsibility. The Judge ultimately concluded that, while Applicant may have good intentions to pay, settle, or dispute several debts alleged in the SOR, he failed to show a track record of financial responsibility, and it is unclear how he will handle his financial responsibilities in the future.

On appeal, Applicant argues that the Judge did not consider evidence submitted in response to the FORM, specifically two documents from a credit management organization indicating that Applicant was working to resolve specific accounts. Applicant also alleges that the Judge did not properly analyze evidence presented by Applicant that he was not responsible for two tax liens. Applicant finally asserts that the Judge erred when she failed to apply various mitigating conditions in Applicant’s favor. These assertions do not establish error on the part of the Judge.

There is a rebuttable presumption that a Judge has considered all the record evidence unless he or she specifically states otherwise. That presumption has not been overcome here. The items of evidence Applicant claims were excluded from the Judge’s analysis are specifically referenced by the Judge in her decision. The Judge discusses the conflict surrounding the status of Applicant’s outstanding tax liens and indicates that the lack of corroboration for his assertion that the liens were

not his responsibility was a factor in her resolution of the issue against Applicant. This analysis is sustainable.

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 specifically gave Applicant credit for the debts that he had resolved and also discussed his interactions with a credit management company. She also noted, however, that Applicant's efforts to resolve his delinquent debt were recent and inconclusive. The Judge concluded that the evidence in mitigation was of insufficient strength to overcome the government's security concerns. 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: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, 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