

KEYWORD: Guideline B; Guideline F

DIGEST: Applicant cited to Board precedent in support of his contention that he had mitigated the security concerns in his case. However, the prior case he cited is distinguishable from his case. Adverse decision affirmed.

CASENO: 08-09052.a1

DATE: 01/25/2010

DATE: January 25, 2010

_____	)	
In Re:	)	
	)	
-----	)	ISCR Case No. 08-09052
	)	
Applicant for Security Clearance	)	
_____	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Samuel Bluck, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On March 30, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On November 9, 2009, after the hearing, Administrative Judge Elizabeth M. Matchinski 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 decision is

arbitrary, capricious, or contrary to law. Finding no error, we affirm the Judge's decision.<sup>1</sup>

The Judge made the following relevant findings of fact: Applicant is 55 years old and is married with three children. In 2003, Applicant purchased a home. In 2004, Applicant purchased a second home and moved into it with his wife, intending to pay a new mortgage (for \$172,000) on the first home and an unsecured loan (for \$43,000) with rent from a tenant and \$400 a month of his own money. In 2005 the tenant stopped paying rent. Applicant covered the mortgage payments for both houses. In 2006 Applicant's earnings decreased and his wife was only willing to contribute 10-15% of the household expenses. The rental house went through foreclosure leaving Applicant with no liability for that home, however, by December 2007 Applicant was past due \$8,104 on a balance of \$9,369 on an installment loan taken out for a new roof for that property. By January 2009, Applicant's delinquent debts totaled \$92,558. He is working with a debt management company paying \$385 a month for 48 months to resolve \$48,718.05 of his debt. Applicant and his wife have refinanced their home, although the mortgage exceeds the current market value of the home. In 2006 Applicant took a car loan of \$36,073 which he pays on time. (The current balance is \$19,569.)

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 objects to some of the Judge's statements concerning his financial situation. After reviewing the record, the Board concludes that the Judge's material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. The statements are therefore sustainable. *See, e.g.*, ISCR Case No. 06-24013 at 2 (App. Bd. Mar. 4, 2008).

Applicant also contends that the Judge did not give adequate 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. 07-00553 at 2 (May 23, 2008). The Judge discussed the evidence, including the mitigating evidence extensively and explained why she concluded that Applicant had failed to meet his burden of persuasion.

Applicant cites the Board's decision in ISCR Case No. 08-06567 (App. Bd. Oct. 29, 2009) for the proposition that the Judge erroneously concluded that he did not act reasonably under the circumstances of this case and did not do all he reasonably could to address his indebtedness. After review, the Board concludes that the case cited by Applicant is distinguishable from the instant case

---

<sup>1</sup>The Judge's favorable Formal findings under Guideline B are not at issue on appeal.

on its facts, and does not contain any analysis or statement of law that renders the Judge's conclusions unsustainable.

After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the 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).

### **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: Jeffrey D. Billett

Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board