

KEYWORD: Guideline F

DIGEST: Although Applicant’s financial problems originated from circumstances outside his control, the Judge concluded that he had done little to address them. Adverse decision affirmed.

CASENO: 08-10613.a1

DATE: 05/20/2010

DATE: May 20, 2010

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| In Re: |) | |
| ----- |) | ISCR Case No. 08-10613 |
| |) | |
| 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 May 20, 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 March 8, 2010, after the hearing, Administrative Judge Richard A. Cefola denied Applicant’s request for a security clearance. Applicant 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 argues that the Judge should have found in his favor because he has held a security clearance without incident since the 1960s, his financial problems were due to unemployment and subtle age discrimination, and he did not seek bankruptcy as a resolution for his unpaid debts.¹ These arguments do not demonstrate that the Judge's decision is arbitrary, capricious or contrary to law.

The Judge made the following relevant findings: Applicant was unemployed or underemployed from 2001 until 2006, a circumstance which caused his current financial difficulties. He has about \$100,000 equity in his house, and has access to about \$80,000 in cash and retirement accounts. Most recently, he and his spouse are engaged in a federally sponsored loan modification process and have retained professional services to expedite the process. Applicant admits to owing about \$72,642 in past due debts to thirteen different creditors. "The Applicant is unsure of the origin of many of these debts, and has done nothing, apart from looking at a loan modification program, to address his debts." Decision at 2.

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). 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 against the seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. The Judge reasonably explained why the mitigating evidence was insufficient to overcome the government's security concerns. In particular, the Judge noted that although Applicant's financial problems had been due to circumstances beyond his control: "Applicant had done little to address the alleged past due debts. They are still outstanding despite his considerable net worth, and he has only started to address them th[r]ough a loan modification program, with unclear results, if any." Decision at 4.

The Board does not review a case *de novo*. 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). Therefore, the Judge's unfavorable security clearance decision is sustainable.

¹To the extent that Applicant's assertions rely on evidence not presented to the Judge at the hearing, the Board cannot consider that new evidence on appeal. See Directive ¶ E3.1.29.

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: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board