

KEYWORD: Guideline F

DIGEST: The Judge’s conclusion that Applicant had demonstrated no reasonable plan for debt repayment was sustainable. Prior decision cited by Applicant has significant differences from Applicant’s case and, therefore, does not establish error by the Judge. Adverse decision affirmed.

CASENO: 08-11699.a1

DATE: 06/08/2010

DATE: June 8, 2010

In Re:)	
)	
-----)	ISCR Case No. 08-11699
)	
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 July 10, 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 19, 2010, after the hearing, Administrative Judge Claude R. Heiny denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge’s adverse security clearance decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board

affirms the Judge's unfavorable decision.

The Judge made the following findings pertinent to the issues raised on appeal: Applicant's financial problems began in 2004 when his sister and mother were incarcerated. He provided \$3,000 toward his mother's attorney's fees. He had previously signed a note for a \$41,000 automobile for his sister with the understanding that she would make monthly payments to him. In 2004, Applicant's sister lost her job and stopped making payments to Applicant. Also in 2004, Applicant purchased a pick-up truck for \$13,000 and an SUV for \$27,000. The combined annual salary of Applicant and his wife at the time was \$78,000. After two months, Applicant stopped making payments on his sister's car as it was interfering with his ability to pay his other debts. The car was repossessed and sold with a balance of \$11,000 remaining to be paid. Applicant made no other payments on the debt and after five years passed, the debt grew to \$20,550. The payments on Applicant's other two vehicles fell delinquent as well, but he managed to work out an agreement with the creditors. Applicant recently retired the loans on these vehicles. Applicant also fell behind on his payments on several credit card accounts.

In 2007 Applicant received \$24,286 from the sale of a home. He had anticipated using the money to pay his debts. However, he had to make a \$18,000 down payment on a new home. Applicant was able to pay off two debts with the remainder, but other delinquencies remained. Applicant incurred a \$5,000 debt to furnish the new house. Applicant is current on the debt but still owes \$1,400. Applicant was able to settle two credit card debts by getting the creditors to accept less than the full amount owed. Applicant settled these accounts by means of a \$5,000 loan. In 2009, Applicant contacted and received financial counseling from a consumer credit counseling service. While he is now current on his mortgage and ten other accounts, Applicant has not paid on two outstanding delinquent debts in the aggregate amount of \$16,700. In October 2008 Applicant stated he wanted to repay the debt, and he restated this intent at the hearing. Following the hearing, Applicant's counsel indicated that the debt no longer appears on Applicant's credit report.¹ No indication of a repayment plan or the establishment of a repayment plan has been received.

The Judge concluded that Applicant's debts are a continuing course of conduct. Two creditors were not paid until after the hearing, and two debts (with one creditor) remain unpaid, with no evidence of a repayment plan. Applicant's numerous debts were not incurred under unusual circumstances. Applicant's unexpected debts when he paid his mother's attorney's fees and his sister's car liability were beyond his control for which he deserves some mitigation. However, these events occurred in 2004. Subsequently, Applicant's household income was between \$78,000 and \$95,000, and it has been more than five years since the events. Applicant did not act responsibly under the circumstances. Since there is no clear indication that the remaining debts are being resolved, Applicant did not mitigate the security concerns arising from his financial considerations.

Applicant asserts that, contrary to the Judge's findings and conclusions, he has acted responsibly regarding his outstanding debts given his circumstances. He argues that the Judge's decision contained an insufficient articulation and unsatisfactory explanation of financially irresponsible behavior. He notes that a plan for immediate or simultaneous repayment of all debts

¹The record was kept open for a period after the hearing for the receipt of additional documentary evidence.

is not required and all that is required is that he act responsibly and develop a reasonable plan for repayment accompanied by concomitant conduct. Applicant argues that the record shows that he has satisfied this requirement. Applicant's arguments do not establish error on the part of the Judge.

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. He discussed the applicability of the mitigating factors listed under Guideline F and indicated in some detail why some mitigating conditions did not apply and why others only partially applied and why those partial applications did not ultimately mitigate the financial concerns raised in the case. Reading the Judge's decision as a whole, the Board concludes that the Judge decided that Applicant had no reasonable plan for repaying his outstanding debts, given the fact that Applicant had indicated his intent to pay on earlier occasions and had not followed through. The Judge also noted that in a post-hearing statement, Applicant drew attention to the absence of the outstanding debts on a recent credit report. These facts led the Judge to doubt whether Applicant genuinely intended to satisfy the past due obligations. This conclusion was reasonable given the record evidence. In other parts of the decision, the Judge also questioned why certain debts of Applicant were not retired sooner given Applicant's income level and the relatively modest level of the debts. The Judge properly evaluated the totality of Applicant's debt history when addressing the issue of whether Applicant had acted responsibly regarding his finances. Given the facts of this case, the Judge was not required, as a matter of law, to conclude that Applicant had mitigated the government's case.

Applicant relies on the Board's rulings in ISCR Case No. 08-06567 (App. Bd. Oct. 29, 2009) to establish error on the part of the Judge in this case. The Board concludes that the facts in the cited case are significantly different from the instant case, and, therefore, nothing contained therein establishes error on the part of the Judge in this case.

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)). "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 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
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