

KEYWORD: Guideline F

DIGEST: Although the Judge found in Applicant's favor with respect to two of the allegations she reasonably explained the mitigating evidence was insufficient to overcome the government's security concerns.

CASENO: 08-11983.a1

DATE: 01/28/2011

DATE: 01/28/2011

In Re:)
)
)
 -----) ISCR Case No. 08-11983
)
)
 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 February 22, 2010, 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 the case be decided on the written record. On October 27, 2010, 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 raised the following issue on appeal: whether the Judge’s adverse decision is arbitrary, capricious or contrary to law.

Applicant contends that the Judge’s adverse decision should be reversed because the Judge did not correctly weigh the evidence under the whole-person concept and reach a commonsense judgment. Specifically, he argues that the Judge did not give sufficient weight to his 26 years of honorable military service, and to the fact his current financial situation is good. With regard to the latter argument, he points to the fact that many of the unpaid debts listed on the SOR have been charged off by the creditors and he is in the process of getting them removed from his credit report.

Applicant’s argument does not demonstrate that the Judge’s decision is arbitrary, capricious or contrary to law. 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 made the following relevant findings: Applicant had four delinquent debts totaling approximately \$20,000. Although Applicant had reported income and financial resources sufficient to pay or settle several of those debts, he had failed to do so. He had not sought financial counseling. While the record reflected that he disputed two of the debts, he failed to explain why he was not responsible for paying them. Decision at 6. In light of the foregoing, the Judge could reasonably conclude that Applicant’s financial problems were still ongoing and that he had not met his burden of persuasion as to mitigation. See, e.g., ISCR Case No. 05-07747 at 2 (App. Bd. Jul. 3, 2007).¹

The Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. She specifically considered Applicant 26 years of honorable military service. Decision at 2. The Judge also considered Applicant’s argument that because the debts have been charged off by the creditors and may no appear on his credit reports, he would no longer be

¹The Board has previously noted that a creditor’s choice to charge off a debt for accounting purposes does not affect the debtor’s obligation to the creditor. See ISCR Case No. 09-01175 at 2 (Ap. Bd. May 11, 2010) and U.S. Treasury-administered website: http://www.helpwithmybank.gov/faqs/loan_general.html.

responsible for them. However, she declined to accept that argument noting that “a strategy of merely waiting out creditors is not an adequate substitute for serious and reasonable efforts to pay off debts.” Decision at 6. Although she found in favor of Applicant with respect to two of the SOR factual allegations, she reasonably explained why the mitigating evidence was insufficient to overcome the government’s security concerns. 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 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
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