

KEYWORD: Guideline F

DIGEST: There is a presumed nexus between proven conduct under any of the Guidelines and security eligibility. Security determinations are not limited to an applicant’s work performance or on-duty conduct. Adverse decision affirmed.

CASENO: 09-00505.a1

DATE: 01/26/2010

DATE: January 26, 2010

)	
In Re:)	
)	
-----)	ISCR Case No. 09-00505
)	
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 13, 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 October 23, 2009, after the hearing, Administrative Judge Carol G. Ricciardello 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.

The Judge found that Applicant owes more than \$200,000 in federal income taxes, as well as \$1,380 in state income taxes and more than \$10,000 in property taxes. Although Applicant stated he had payment plans in place, he did not provide proof he is paying any of these debts. His testimony about payment plans is not credible. Applicant intentionally did not pay his federal, state, and property taxes for many years, up to tax year 2007. He has numerous tax liens and consumer debts that are not paid. The Judge concluded that Applicant's conduct was extensive, serious, and repetitive, and that he has done very little to resolve his tax issues. The Judge also concluded that Applicant has not changed his behavior and his motivation was greed. The Judge concluded that Applicant had failed to mitigate the security concerns raised by his financial actions.

Applicant argues that the Judge focused too much on his past and did not take into account that he took a second job in an effort to correct his financial situation. He stated that he has worked for his employer since 1987 without any incidents of a security nature. Applicant's assertions do not establish harmful error on the part of the Judge.

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).

Applicant argues that the Judge was too focused on his "personal life." The Directive presumes there is a nexus or rational connection between proven conduct under any of the Guidelines and an applicant's security eligibility. *See, e.g.*, ISCR Case No. 02-22325 at 3-4 (App. Bd. Jul. 30, 2004). Security clearance determinations are not limited to consideration of work performance or conduct during duty hours. *See, e.g.*, ISCR Case No. 04-08623 at 5 (App. Bd. Jul. 29, 2005). The federal government need not wait until an applicant actually mishandles or fails to safeguard classified information before it can deny or revoke access to such information. *See Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969). The absence of security violations does not bar or preclude an adverse security clearance decision. *See* ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005).

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 discussed the applicability of Guideline F mitigating conditions and cogently explained why there was insufficient mitigation to overcome the government's security concerns, stressing the facts that Applicant deliberately sought to avoid numerous tax obligations over a number of years after being told by a tax advisor that he must pay his taxes, used retirement money to take his family on resort cruises, and failed to provide credible evidence that he has made payments on his tax delinquencies or other debts listed in the SOR.

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 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 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