

KEYWORD: Guideline F

DIGEST: Applicant failed to demonstrate a track record of debt repayment sufficient to mitigate the security concerns in his case. The Board cannot consider new evidence. Adverse decision affirmed.

CASENO: 09-02926.a1

DATE: 05/11/2010

DATE: May 11, 2010

In Re:)	
)	
-----)	ISCR Case No. 09-02926
)	
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 December 8, 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 decision on the written record. On March 30, 2010, after considering the record, Administrative Judge Noreen A. Lynch denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm the Judge’s adverse security clearance decision.

The Judge made the following relevant findings of fact: Applicant underwent periods of unemployment while working for several employers. One period of unemployment lasted from January 2008 until April 2008. Applicant then worked as a real estate loan officer until October 2008. The pay for that job was based on commission, and Applicant did not earn enough to support his family. At the same time, Applicant's wife was on unpaid maternity leave. Applicant missed payments on his debts because of his reduced income in 2008. Applicant admitted that he owes approximately \$50,000 in delinquent debt. The delinquencies include a mortgage, a second mortgage, two credit cards, a loan for a television, a car loan, and a deficiency due to the voluntary repossession of a car. At the time the Judge was considering the record, Applicant also had student loans that were in forbearance. Applicant and his wife have met with an attorney to seek advice on filing for bankruptcy under Chapter 13. They have developed a plan for dealing with the delinquent debts and discharging them within five years under bankruptcy. Applicant will meet with the attorney again in late March 2010 to file for bankruptcy. Applicant is sure he will be able to make the payments required under the plan (\$630 per month) while resuming his mortgage payments (\$1,153 per month) and keeping up with current expenses.

In his appeal brief, Applicant states that he does not dispute the Judge's factual findings, but asks that the Board grant him a clearance based on the evidence already in the record and on new evidence he provides in his brief. Applicant explains steps he is currently taking to file for bankruptcy and otherwise improve his financial situation. As in the record below, Applicant indicates that he has a plan under which all of his debts will be discharged within five years after he files for bankruptcy. Applicant also includes letters of recommendation and other information about his financial circumstances. To the extent that the information was not already in the record below, it constitutes new evidence, and the Board cannot consider it. *See* Directive ¶ E3.1.29. Also, Applicant seeks a continuance to allow him to develop additional (favorable) evidence. An applicant is not entitled to a delayed or deferred adjudication of his or her security eligibility. *See, e.g.*, ISCR Case No. 06-22044 at 2 (App. Bd. Feb. 28, 2008). *Compare* ISCR Case No. 05-06059 at 2 (App. Bd. Mar. 2, 2007), in which the Board stated that it "does not review cases *de novo*, and has no authority to continue Applicant's case to allow [him] to work on [his] financial problems."

On appeal, Applicant emphasizes his plan to be debt-free within five years. The Judge considered Applicant's plan in her decision, but stated that Applicant "has not established a track record of financial reform." Decision at 5. Board decisions indicate that promises of future payment are not a substitute for a track record of debt payment or other responsible approaches. *See, e.g.*, ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009).

A review of the record indicates that the Judge weighed the mitigating evidence offered by Applicant against his financial history and considered the possible application of relevant mitigating conditions and factors. Decision at 4-5. The Judge reasonably explained why the evidence Applicant had presented in mitigation was insufficient to overcome the government's security concerns. *Id.* 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). The Judge examined the relevant data and articulated a satisfactory explanation for her decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State*

Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines 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.’” *Dep’t of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Accordingly, the Judge’s adverse decision is sustainable.

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra’anan

Michael Y. Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board