

KEYWORD: Guideline F

DIGEST: Applicant failed to demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Judge reasonably explained his conclusion that Applicant had failed to mitigate the security concerns in his case. Adverse decision affirmed.

CASE NO: 09-03480.a1

DATE: 06/02/2011

DATE: June 2, 2011

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|                                  | ) |                        |
| In Re:                           | ) |                        |
|                                  | ) |                        |
| -----                            | ) | ISCR Case No. 09-03480 |
|                                  | ) |                        |
| 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 April 26, 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 a hearing. On April 6, 2011, after the hearing, Administrative Judge Robert J. Tuider 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 security clearance decision is arbitrary, capricious, or contrary to law. Consistent with the following discussion, the Board affirms the Judge's decision denying Applicant a security clearance.

The Judge made the following relevant factual findings: Applicant immigrated to the United States from Vietnam after high school and earned an engineering degree in the United States thereafter. Applicant became a U.S. citizen in 1984. Applicant has been separated from his wife since 2003 and has a son in college. Applicant's SOR alleges six debts totaling \$45,863. Two of the debts represent unpaid income tax owed to two states. One is unpaid federal income tax, which Applicant arranged to pay off by automatic deductions from his checking account. Another is unpaid student loans owed to the Department of Education (DOE). DOE initiated a garnishment action to collect that debt from Applicant's pay. The last two are credit card debts.

In his appeal brief, Applicant repeated the steps he has taken to settle the above debts, including some steps taken while the record was held open after the hearing.<sup>1</sup> Applicant argues that the Judge did not give adequate weight to the evidence he presented in mitigation. Applicant has not demonstrated error on the part of the Judge, since the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance determination. 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*. 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 that 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. 08-11983 at 2 (App. Bd. Jan. 28, 2011).*

In this case, the Judge found in Applicant's favor with regard to his federal income tax debt and noted Applicant's efforts to settle his other debt. The Judge discussed the possible application of the relevant mitigating conditions. Decision at 6-8. The Judge reasonably explained why Applicant's actions were insufficient to satisfy 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 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)). Therefore, the Judge's adverse decision under Guideline F is sustainable on this record. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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<sup>1</sup> Applicant also related some steps he has taken since the close of the record. The Board cannot consider information that was not part of the record below. *See* Directive ¶ E3.1.29.

## Order

The Judge's decision denying Applicant a security clearance is AFFIRMED.

Signed: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board