

KEYWORD: Guideline F

DIGEST: The Board does not have the authority to waive provisions of the Directive. A party's disagreement with the Judge's weighing of the evidence does not demonstrate error. Adverse decision affirmed.

CASENO: 09-03724.a1

DATE: 03/23/2010

DATE: March 23, 2010

In Re:)	
)	
----)	ISCR Case No. 09-03724
)	
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 September 4, 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 January 12, 2010, after the hearing, Administrative Judge Carol G.

Ricciardello 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 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 \$136,000 for a defaulted home equity loan. Applicant obtained the loan to help his brother refinance the brother's home. The home equity loan remained unpaid after the house was sold at foreclosure. Applicant and his brother have not formulated a plan to repay the debt. Applicant stated he plans on paying the debt, but he did not provide any details on how or when he plans to do so. Applicant plans to get married and to obtain a masters degree. Applicant has not had financial counseling. He does not have a written budget. The Judge concluded that Applicant is unable and unwilling to repay the loan. She also concluded that although circumstances were somewhat beyond Applicant's control, Applicant has not acted reasonably under the circumstances. The Judge pointed out that it has been two years since Applicant defaulted on the debt, yet he has not saved any money to put toward paying the debt. Rather, Applicant is focused on other financial priorities, such as marriage and additional education. The Judge concluded that there are no clear indications the problem is being resolved nor has he made a good-faith effort to repay the debt.

Applicant asserts that the Judge failed to show how Applicant can be a threat, when he has consistently paid his debts on time and the exception of the home equity loan is a common circumstance for hundreds of thousands of Americans. Further, Applicant asserts that the Judge's decision to deny him a clearance runs contrary to current government policy which calls for relief for people who have lost their home. Applicant also argues that his circumstances and the efforts he has made to enable his eventual repayment of the debt mitigate the government's case against him.

Applicant's arguments concerning whether or not he is a threat, or whether the Judge's decision runs contrary to government policy, do not establish error. The Board and the Judge are bound by the provisions of the Directive. The Board does not have the authority to waive provisions of the Directive. *See, e.g.*, ISCR Case No. 08-08012 at 2 (App. Bd. Nov. 20, 2009). Nor does the Board have the authority to entertain challenges to the wisdom or legality of provisions of the Directive. *See, e.g.*, ISCR Case No. 04-01961 at 3 (App. Bd. Jul. 12, 2007) and ISCR Case No. 04-10821 at 2 (App. Bd. Jul. 19, 2006).

Regarding Applicant's mitigation argument, 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 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 Adjudicative Guidelines ¶20 at some length, indicating her understanding that the precipitating events that led to the loan default were the financial circumstances and actions of Applicant’s brother and not Applicant. However, as discussed in a preceding paragraph, the Judge concluded that there was insufficient evidence to conclude that Applicant acted prudently in making attempts to resolve the delinquent debt in the two years since the default. The Judge also noted that undertaking the responsibility of the home equity loan was a voluntary act on Applicant’s part, notwithstanding his sense of obligation to his brother. These conclusions are reasonably supported by the record as are the Judge’s conclusions about the applicability of the other mitigating conditions and her whole person analysis.

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 her 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