

KEYWORD: Guideline F

DIGEST: The Judge concluded that Applicant's debts originally grew out of circumstances largely out of her control. However, Applicant subsequently failed to act responsibly. The Judge's includes a rational connection between the facts found and the choices made. Adverse decision affirmed.

CASENO: 09-03766.a1

DATE: 04/23/2010

DATE: April 23, 2010

In Re:	)	
	)	
-----	)	ISCR Case No. 09-03766
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Willey E. Shelton, Personal Representative

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security

clearance. On August 19, 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 February 19, 2010, after the hearing, Administrative Judge Edward W. Loughran 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 adverse security clearance decision was arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable decision.

The Judge made the following findings: Applicant’s finances were in order before she married her third husband. Applicant’s third husband was an alcoholic who spent time in prison, could not keep a job, and spent foolishly when he did have money. When Applicant filed for divorce in 2002, her husband promised he would pay part of the marital debts, but he never did. Applicant was then responsible for all of the marital liabilities and several of the debts became delinquent. Applicant accumulated a total of \$13,631 of delinquent debt and she filed for Chapter 13 bankruptcy in July 2009. Applicant’s payment plan was confirmed and she made the first four payments.

The Judge concluded that, although the circumstances that initially resulted in Applicant’s debt problems were largely out of her control, Applicant subsequently failed to act responsibly under the circumstances. The Judge pointed out that Applicant has been divorced for more than seven years and has had steady employment since 1991. The Judge concluded that sufficient time has elapsed for Applicant to adjust to her financial situation and to take steps to remedy the problem. The Judge concluded that Applicant only began addressing her finances in earnest after they became an issue for her security clearance. The Judge also noted that Applicant’s more recent problems with overdrafts and with delinquent taxes are not related to her ex-husband. The Judge concluded that, although Applicant has received financial counseling as part of her bankruptcy and has made the first four monthly payments as required, there are not clear indications that her financial problems are being resolved or are under control. The Judge also concluded that the four payments made to the bankruptcy trustee were not sufficient to qualify as a good-faith effort to pay or resolve debts.

Applicant asserts that the Judge did not take into consideration the continuing impact of her divorce on her financial profile in the years since 2002, failed to take into account numerous debts that Applicant paid off after the divorce, and wrongly concluded that Applicant had no plans to pay off a judgment against her. Applicant’s arguments do not establish error.

Applicant points to nothing specific in her argument about the inordinate effect her divorce had on her finances during the seven years since it was finalized, other than to say she still had to maintain a household. The Board has reviewed the Judge’s decision and is satisfied that he adequately addressed the impact that Applicant’s husband’s lifestyle and the subsequent divorce had upon her finances. The Judge noted that Applicant’s financial difficulties were initiated in large part by circumstances beyond her control. The Judge concluded, however, that Applicant had not been diligent in resolving her debt delinquencies in recent years. The Board finds reasonable support for

this conclusion in the record. Regarding paid off debts, the Judge specifically mentions the fact that Applicant retired some debts in the years after her divorce. The Judge's conclusion that Applicant had no plan to address the judgment against her until she applied for a security clearance and her finances became an issue is supported by substantial evidence.

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. He discussed the applicability of the mitigating factors listed under Guideline F, but indicated with considerable detail why those mitigating conditions could not be invoked in this case to alleviate the government's security concerns.

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 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)). "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