

KEYWORD: Guideline F

DIGEST: The Judge's conclusion that Applicant's debts were numerous, ongoing, and not the result of circumstances making them unlikely to recur is sustainable. Adverse decision affirmed.

CASENO: 09-05485.a1

DATE: 01/20/2011

DATE: January 20, 2011

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In Re: )  
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 ----- ) ISCR Case No. 09-05485  
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 Applicant for Security Clearance )  
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**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 12, 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 November 22, 2010, after the hearing, Administrative Judge LeRoy F. Foreman 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 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 of fact: Applicant lost his job as an administrator at a private school when the school closed in December 2001. He was unemployed until he began working for a federal agency in September 2002. He was terminated from this position in June 2006 due to absenteeism resulting from medical problems. He admitted that he should have informed his supervisor of his medical condition. He was unemployed until April 2007, when he found employment in the private sector. He was unemployed from July 2008 until January 2009, when he began his current job. Applicant's financial problems began with his unemployment in December 2001. They were exacerbated by his wife's unsuccessful attempt at operating a childcare center that began failing in 2000. Applicant filed Chapter 13 bankruptcy petitions in September 2001, June 2002, July 2003, and January 2004. All four were dismissed for failure to make the required payments. Applicant separated from his wife in November 2003. Since 2006, Applicant has lived with another woman and her son. She owns the home, and Applicant shares the living expenses. The woman lost her job about two months before the hearing, and her application for unemployment benefits was denied on the ground that she was terminated for willful misconduct. As of the date of the hearing, her electric bill, telephone bill, and homeowner's insurance bill were past due. In addition to the four bankruptcies, the SOR alleges 15 delinquent debts totaling about \$31,000. Applicant testified that he has been unable to make payments on any of his debts since 2000. He admitted 11 of the debts, and his admissions are corroborated by his credit reports. Applicant satisfied a federal tax lien prior to 2010. Applicant testified that he paid two medical bills listed in the SOR, but he presented no documentation of payment. He testified that a single debt for overpayment of wages by a prior employer was satisfied, but he presented no documentation. He denied liability for a state tax lien and an insurance bill, but presented no evidence that the debts were resolved or that he had filed a dispute with the credit bureau. Applicant did present evidence that a deficiency from a car repossession was being collected by a garnishment of his pay.

The Judge concluded that: Applicant's financial history raises security concerns. Applicant's delinquent debts are numerous, ongoing, and not the result of circumstances making them unlikely to recur. The failure of the childcare business operated by Applicant's wife was a circumstance beyond their control, as were Applicant's periods of unemployment in 2002 and 2008-2009. However, Applicant has not acted responsibly. He lost his job in 2006 through his own fault. As of the date of the hearing, Applicant had been employed for 20 months, but had taken no action to resolve his delinquent debts. There is no evidence that Applicant has sought or received counseling, and his financial situation is not under control. Applicant presented no evidence to support his claim that he has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. With the exception of the federal tax lien, Applicant presented no documented proof

establishing a basis for disputing the debts he has denied owing. None of the mitigating factors under Guideline F have been established to mitigate the government's security concerns. Under the whole-person concept, Applicant is a mature adult who has established a good reputation with his current employer, and he was candid and sincere at the hearing. However, he has reacted passively to his financial situation, and he has taken no affirmative action to resolve his debts. Applicant has not mitigated security concerns.

Applicant argues that the Judge did not give his situation full consideration, and based his decision solely on what was stated in his credit report. More specifically, he argues that his indebtedness resulted from factors beyond his control and that Guideline F mitigating condition ¶ 20(b)<sup>1</sup> should have been applied in a manner that mitigated the case. Applicant's assertions do not establish error on the part of the Judge.

Applicant's brief contains a long narrative that details the facts and circumstances surrounding his financial problems. Much of it is a restatement of facts already in evidence. Some of it contains representations that were not a part of the record below. The Board cannot consider new evidence. Directive ¶ E3.1.29.

A Judge is presumed to have considered all the evidence in the record unless he specifically states otherwise. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009); ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008). Applicant has not overcome this presumption. It is clear from a reading of the Judge's decision that he gave consideration to the unique facts of Applicant's case and did not restrict his analysis to the mere fact of Applicant's indebtedness. The Judge discussed in detail each of the potentially applicable Guideline F mitigating conditions and related them to the facts of the case.

Applicant cites evidence he maintains supports a granting of his security clearance. 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. The Judge properly considered the whole pattern of Applicant's handling of his finances, including those matters over which Applicant had no control. He adequately discussed why the disqualifying conduct established under Guideline F was not mitigated.

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<sup>1</sup> “[T]he conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances[.]”

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: 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