

KEYWORD: Guideline F

DIGEST: Applicant's interpretation of the record is not corroborated by the record evidence. Absent such corroboration, Applicant's assertions do not establish error on the part of the Judge. Adverse decision affirmed.

CASENO: 09-06536.a1

DATE: 05/16/2011

DATE: May 16, 2011

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In Re:)	
)	
-----)	ISCR Case No. 09-06536
)	
)	
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 1, 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 February 28, 2011, after the hearing, Administrative Judge John Grattan Metz, Jr. 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’s financial problems include 13 delinquent debts totaling over \$54,000. Applicant’s delinquent indebtedness includes a \$12,000 past-due mortgage, seven collection accounts, three charged-off accounts, a judgment and an Internal Revenue Service lien. Applicant’s explanation regarding his first wife’s unsuccessful battle with cancer is insufficient given the chronology of Applicant’s indebtedness and failure to file tax returns until several years after her death. Applicant has not sought counseling.

The Judge concluded as follows: The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. He produced no evidence of circumstances beyond his control, and, except for three debts he has not acted responsibly in addressing his debts. He has received no credit or financial counseling, nor has he demonstrated that his financial problems are under control, or that he has a plan to bring them under control. He has not made a good-faith effort to satisfy his debts. The government established a case for disqualification under Guideline F and Applicant did not mitigate the security concerns.

Applicant’s appeal relies, in part, on new evidence, which the Board cannot consider. *See* Directive ¶ E3.1.29.

Applicant argues that the Judge misconstrued portions of the record evidence and reached erroneous conclusions. In essence, Applicant states that credit reports in evidence are in error, some detailed findings of the Judge regarding his finances are in error, he was truthful to the best of his recollection when testifying, and he has mitigated the government’s case. Applicant’s interpretation of the record is not corroborated by the record evidence. Absent such corroboration, Applicant’s assertions do not establish error on the part of the Judge.

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*. 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. 10-00278 at 2 (App. Bd. Mar. 18, 2011). 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 and concluded that Applicant had not mitigated the government's concerns. The Judge's findings of fact and his conclusions are reasonably supported by the record evidence.

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. 09-02732 at 2 (App. Bd. Mar. 18, 2011). 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: Michael D. Hipple

Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board