

KEYWORD: Guideline F

DIGEST: Applicant failed to demonstrate that the Judge erred in her analysis of the mitigating conditions. The Board cannot consider evidence not included in the record. Adverse decision affirmed.

CASE NO: 09-07456.a1

DATE: 05/19/2011

DATE: May 19, 2011

In Re:)	
)	
-----)	ISCR Case No. 09-07456
)	
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 October 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 decision on the written record. On February 14, 2011, after considering the record, Administrative Judge Jennifer I. Goldstein denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse clearance decision is arbitrary, capricious or contrary to law.

Applicant argues that the Judge's adverse decision should be reversed because the Judge erred in concluding that Applicant's efforts to resolve his indebtedness were insufficient to mitigate the government's security concerns. Applicant's arguments do not demonstrate that the Judge's decision is arbitrary, capricious or contrary to law.

On appeal, Applicant submits several documents which post-date the Judge's decision and were not part of the record evidence. Furthermore, other documents submitted by Applicant, although they predate the Judge's decision were not part of the record before the Judge. The Board cannot consider this new evidence. *See* Directive ¶ E3.1.29.

In this case, the Judge found that Applicant had significant outstanding debts, and was still trying to resolve his financial problems. Although the Judge found that one of his outstanding debts is being paid, and that he disputes some others, the Judge reasonably concluded that there is little indication Applicant's delinquent accounts are being resolved or are under control. Decision at 6-7. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing. *See, e.g.*, ISCR Case No. 05-07747 at 2 (App. Bd. Jul. 3, 2007). The Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct, and considered the possible application of relevant conditions and factors. While she found in favor of Applicant as to one of the SOR factual allegations, she reasonably explained why the mitigating evidence was insufficient to overcome the government's security concerns. 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).

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 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 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