

KEYWORD: Guideline F

DIGEST: In light of Applicant’s financial history, his evidence that he had paid off some non-SOR debts and partially paid one SOR debt was not sufficient to mitigate the security concerns in his case. Adverse decision affirmed.

CASE NO: 09-07853

DATE: 10/06/2010

DATE: October 6, 2010

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In Re:)	
)	
-----)	ISCR Case No. 09-07853
)	
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 9, 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 the case be decided on the written record. On July 29, 2010, after considering the record, 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 raised the following issue on appeal: whether the Judge's adverse decision is arbitrary, capricious or contrary to law.

Applicant contends that the Judge's adverse decision should be reversed because the evidence shows that he is trustworthy, reliable and lives within his means. His appeal brief contains new evidence, in the form of a documentary exhibit that indicates he has paid a debt subsequent to the close of the record in this case. The Board cannot consider this new evidence on appeal. *See* Directive ¶ E3.1.29. Applicant's remaining arguments do not demonstrate that the Judge's decision is arbitrary, capricious or contrary to law.

In this case, the Judge made the following relevant findings of fact: Applicant admitted owing 11 delinquent debts and two unpaid judgements totaling \$16,634. Decision at 2. Although he paid six debts not alleged in the SOR and made a partial payment on one debt alleged in the SOR, the Judge was unable to make a determination that Applicant acted responsibly under the circumstances, principally because of questions that were unanswered by the limited information available in the record. Applicant has not resolved most of the debts alleged in the SOR and his financial issues are recent and ongoing. "There is no evidence that Applicant received financial counseling. There is insufficient evidence for a determination that Applicant made a good-faith effort to . . . resolve his delinquent debts, or that his overall financial problems are . . . under control." *Id.* at 5.

In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing and that he had not met his burden of persuasion as to mitigation. *See, e.g.,* ISCR Case No. 05-07747 at 2 (App. Bd. Jul. 3, 2007). The Judge weighed the limited mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. He found in favor of Applicant as to one of the SOR factual allegations. However, he reasonably explained why the mitigating evidence was insufficient to overcome the government's security concerns.

Applicant's appeal argument can reasonably be construed as an alternative interpretation of the evidence. It is well established that such an argument is insufficient to demonstrate error. *See, e.g.,* ISCR Case No. 06-10859 at 4 (App. Bd. Sep. 2, 2010).

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 the 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 under Guideline F 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: James E. Moody _____

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: William S. Fields _____

William S. Fields
Administrative Judge
Member, Appeal Board