

KEYWORD: Guideline F

DIGEST: At the time the case was submitted for decision Applicant still had significant outstanding debts. The Judge could reasonably conclude that the problems were ongoing. Adverse decision affirmed.

CASENO: 09-08405.a1

DATE: 02/01/2011

DATE: February 1, 2011

In Re:	)	
	)	
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	)	
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 May 11, 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 24, 2010, after the hearing, Administrative Judge David M. White 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 contends that the Judge's adverse decision should be reversed because the Judge did not correctly weigh Applicant's mitigating evidence. Applicant argues that the Judge's adverse decision focused exclusively on the government's older credit report, showing approximately \$90,000 in delinquent debt, rather than Applicant's more recent credit report, showing a 60% reduction in that delinquent debt in the three months prior to the hearing. He also argues that the Judge failed to give adequate weight to his favorable employment and character evidence under the whole-person concept. Applicant's arguments do not demonstrate that the Judge's decision is arbitrary, capricious or contrary to law.

In reaching his decision, the Judge gave due consideration to "[t]he strong testaments to [Applicant's] good character, integrity, and trustworthiness by his supervisor and coworkers." Decision at 8. However, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. 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 found that Applicant had a lengthy history of not meeting financial obligations. At the time the case was submitted for decision, Applicant still had significant outstanding debts, and was still trying to resolve his financial problems. In light of the foregoing, the Judge could reasonably conclude that those 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. He specifically considered the evidence referenced by Applicant in his appeal brief and reasonably explained why that evidence was insufficient to overcome the government's security concerns:

Even if the \$50,411 in debt that no longer reflects on Applicant's credit reports . . . is excluded, almost \$40,000 in delinquent debt remains. If Applicant's estimate of \$1,350 in surplus income per month is truly available, it would take 29 months to resolve this debt. Thus the beginning of mitigation was established . . . but the track record of actual debt repayment is far too short to provide substantial mitigation of the foregoing security concerns. Moreover, uncollectible debt may no longer support

concerns about financial coercion or duress, but ignoring financial obligations for that lengthy period does not alleviate concerns about Applicant's judgment or willingness to comply with rules and regulations. Decision at 6-7.

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 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 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: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board