

KEYWORD: Guideline F

DIGEST: The Judge reasonably explained why the mitigating evidence was insufficient to overcome the government's security concerns. Adverse decision affirmed.

CASENO: 10-01209.a1

DATE: 04/28/2011

DATE: April 28, 2011

---

In Re: )  
 )  
 )  
 ---- ) ISCR Case No. 10-01209  
 )  
 )  
 Applicant for Security Clearance )  
 )  
 )

---

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

James S. DelSordo, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 16, 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 8, 2011, after the hearing, Administrative Judge Rita C. O’Brien 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 clearance decision is arbitrary, capricious or contrary to law.

Applicant contends that the Judge’s adverse decision should be reversed because the evidence presented at the hearing was sufficient to mitigate the government’s security concerns. In support of this contention she argues that her financial problems were the result of circumstances beyond her control and that she has resolved a number of her outstanding debts. Applicant’s argument does not demonstrate that the Judge’s decision is arbitrary, capricious or contrary to law.

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*. 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. 08-07753 at 2 (App. Bd. Feb. 25, 2011).

In this case, the Judge found that Applicant had a lengthy history of not meeting financial obligations, including approximately \$43,000 in unpaid debts for state and Federal tax liens, and credit card, medical and consumer debts. Decision at 3-6. Although Applicant had made some efforts to resolve her financial problems, the Judge noted that her past tax liens had been primarily paid through garnishments of her pay and seizure of her tax refunds, and that insofar as debt resolution was concerned, “[m]any of her steps were taken shortly before the hearing, indicating that she was responding more to the security process than to her legitimate obligations.” *Id.* at 9-10. At the time the case was submitted for decision, Applicant still had significant outstanding debts and was still trying to resolve her financial problems. In light of the foregoing, the Judge could reasonably conclude that those problems were still ongoing. *See, e.g.*, ISCR Case No. 09-02646 at 3 (App. Bd. Mar. 8, 2011). 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. She reasonably explained why the mitigating evidence was insufficient to overcome the government’s security concerns. 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. 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: Jean E. Smallin \_\_\_\_\_  
Jean E. Smallin  
Administrative Judge  
Member, 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