

KEYWORD: Guideline F

DIGEST: Hearing Office decisions in other cases may be cited as persuasive authority, but they are not binding legal precedent. The Judge reasonably explained her conclusion that Applicant had not mitigated the security concerns in his case. Adverse decision affirmed.

CASE NO: 10-03020.a1

DATE: 06/02/2011

DATE: June 2, 2011

In Re:)	
)	
-----)	ISCR Case No. 10-03020
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 17, 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 March 23, 2011, after the hearing, Administrative Judge Darlene D. Lokey Anderson 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 his financial problems are not recent, they were due to circumstances beyond his control, and the statute of limitations has run on all his outstanding debts. His argument does not demonstrate that the Judge's decision is arbitrary, capricious or contrary to law.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to mitigate those concerns. Directive ¶ E3.1.15. 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, 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 support of his appeal, Applicant cites to other Hearing Office decisions which he believes are similar to his case and in which the Judge granted the applicant a clearance. While Hearing Office decisions in other cases may be cited as persuasive authority, those cases are not binding legal precedent which a Hearing Office Judge must follow in another situation. Applicant's reliance on other Hearing Office decisions does not demonstrate that the Judge erred in this case. *See, e.g.*, ISCR Case No. 09-08417 at 2 (App. Bd. Apr. 4, 2011).

In reaching her adverse decision, the Judge noted that while Applicant's financial problems may have started as a result of a job lay-off, they did not continue due to lack of financial ability. "Since 2008, the Applicant has been employed full time and has been earning well over six figures annually. Based upon his testimony, he has sufficient monies left over after his monthly expenses that he could use to pay his delinquent debts if he wanted to. Instead he chose not to pay them." Decision at 6. In light of the foregoing, the Judge's conclusion that Applicant had not mitigated the Government's security concerns is not arbitrary, capricious or contrary to law. *See, e.g.*, ISCR Case No. 02-32606 at 3-5 (App. Bd. Jan. 21, 2004).

Applicant's argument regarding his research of debt collection law is not persuasive. DOHA proceedings are not aimed at collecting an applicant's debts. A security clearance adjudication is designed to evaluate an applicant's judgment, reliability and trustworthiness so that a sound decision is rendered. *See, e.g.*, ISCR Case No. 09-02160 at 5 (App. Bd. Jun. 21, 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 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, 158 (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). Accordingly, 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'an

Michael Y. Ra'an
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board