

KEYWORD: Guideline F

DIGEST: Applicant has a lengthy history of not meeting financial obligations. Adverse decision affirmed.

CASENO: 10-08308.a1

DATE: 11/03/2011

DATE: November 3, 2011

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In Re: )  
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 ----- ) ISCR Case No. 10-08308  
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 Applicant for Security Clearance )  
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**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 March 10, 2011, 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 August 25, 2011, after the hearing, Administrative Judge Michael H. Leonard 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 it was arbitrary, capricious and contrary to law for the Judge to conclude that it was too soon to tell if Applicant's pending Chapter 7 bankruptcy case would be the end of his financial problems. Applicant's argument does not demonstrate that the Judge erred in reaching his adverse decision.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. 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 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. At the time the case was submitted for decision, Applicant still had significant outstanding debts, and was still trying to resolve his financial problems. He had only recently sought protection under the bankruptcy laws, and his Chapter 7 case was still pending. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing. *Id.* 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 reasonably explained why the mitigating evidence was insufficient to overcome the government's security concerns.

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). The Judge's unfavorable security clearance decision is sustainable.

**Order**

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board