

KEYWORD: Guideline F

DIGEST: The Judge found that Applicant had a history of financial problems triggered in part by an adjusting ARM loan, which caused his mortgage payments to spike to the point that credit cards were used to meet living expenses. At the time of the hearing Applicant was still in the process of trying to obtain a discharge of his debts through a Chapter 7 bankruptcy. The Judge concluded that Applicant's current financial situation is precarious as shown by a negative monthly cash flow of several hundred dollars. The Judge reasonably explained why the mitigating evidence was insufficient to overcome the government's security concerns. Adverse decision affirmed.

CASE NO: 11-00421.a1

DATE: 06/15/2012

DATE: June 15, 2012

In Re:)	
)	
-----)	ISCR Case No. 11-00421
)	
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 October 27, 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 April 3, 2012, 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 his indebtedness did not stem from frivolous spending or criminal conduct, he received counseling, he took reasonable actions to resolve his indebtedness, he is currently debt free, and he has now received a discharge in bankruptcy. Part of Applicant’s argument is based upon new evidence which the Board cannot consider on appeal. Directive ¶ E3.1.29. The balance of his 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. 10-08508 at 2 (App. Bd. Jan. 4, 2012).

In this case, the Judge found that Applicant had a history of financial problems triggered partially by an adjusting ARM loan, which caused his mortgage to spike to the point where credit cards were used to meet living expenses. As a result, Applicant had defaulted on two credit card debts in the amount of \$11,000 and \$6,032, both of which had been placed for collection. At the time of the hearing Applicant was still in the process of trying to obtain a discharge of those debts and other debts through a Chapter 7 bankruptcy, which he had filed after the issuance of the SOR. Decision at 2-3.

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 noted Applicant’s receipt of counseling and his efforts to put his financial house in order. However, he also noted that: “[Applicant’s] current financial situation is precarious as shown by a negative monthly cash flow of several hundred dollars. At this point, there is no indication of a favorable upward trend upon which to rely, and it is too soon to tell if or when his financial situation will stabilize.” Decision at 7. Accordingly, the Judge reasonably explained why that mitigating evidence was insufficient to overcome the government’s security concerns in light of the totality of the record evidence.

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: 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