

KEYWORD: Guideline F

DIGEST: 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 harmful error. Adverse decision affirmed.

CASENO: 11-00786.a1

DATE: 01/12/2012

DATE: January 12, 2012

In Re:

Applicant for Security Clearance

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) ISCR Case No. 11-00786
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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 June 15, 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 that the case be decided on the written record. On October 26, 2011, after considering the record, Administrative Judge Shari Dam denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge’s decision was arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable decision.

The Judge made the following findings of fact: Applicant is 37 years old, a high school graduate and single. Applicant’s SOR alleges 12 delinquent accounts with an approximate total balance of \$ 22, 089. Applicant has paid three debts worth \$172. He recently executed a repayment plan for six debts worth \$11,891. He did not provide evidence of initial payments under the plan. He asserted that three debts worth in excess of \$10,000 are duplicate but failed to provide corroborating evidence. He has not obtained credit counseling. He did not provide any reference letters or copies of his performance evaluations for consideration of his trustworthiness, good judgment or reliability.

The Judge reached the following conclusions: Applicant’s financial situation continues to cast doubt on his reliability, trustworthiness, and good judgment. He provided some evidence that the financial problems were caused by circumstances beyond his control but he did not demonstrate that he behaved responsibly under the circumstances. Applicant’s financial difficulties are ongoing and not isolated. Applicant did not provide sufficient mitigating evidence to establish that he is resolving his delinquent accounts and that he is taking steps to prevent future financial problems.

Applicant’s appeal brief contains several documents which were not submitted to the Administrative Judge. These constitute new evidence, which the Board cannot consider. *See* Directive ¶ E3.1.29.

The Board interprets the remaining portions of Applicant’s brief as assertions of fact in support of a case for mitigation. 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. 10-07138 at 3 (App. Bd. Oct. 26, 2011).

In this case, the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and applied relevant conditions. She explained why the disqualifying conduct established under Guideline F was not sufficiently mitigated.

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, 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 ultimate 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: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board