

KEYWORD: Guideline F

DIGEST: Applicant’s disagreement with the Judge’s weighing of the evidence was not sufficient to demonstrate error. The Appeal Board cannot consider new evidence on appeal. Adverse decision affirmed.

CASE NO: 11-00982.a1

DATE: 06/12/2012

DATE: June 12, 2012

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In Re:	)	
	)	
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	)	
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 September 30, 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 the case be decided on the written record. On March 29, 2012, after considering the record, Administrative Judge Arthur E. Marshall, Jr. 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.

In this case, Applicant elected to have a decision based on the written record, and then filed a limited response to the government's file of relevant material (FORM). On appeal, he seeks reversal of the Judge's adverse decision arguing that "the [J]udge makes no mention of the historic real estate market crash," and that the Judge's whole-person analysis failed to consider the totality of Applicant's circumstances including his accomplishments and character. In support of his argument, he submits an extensive amount of new evidence, including a detailed statement addressing the allegations in the SOR and multiple documentary exhibits, such as e-mail communications, short sale forms, tax forms, leases, financial data, evidence of home improvements, and articles on the housing market. The Board cannot consider this new evidence on appeal. *See* Directive ¶ E3.1.29.

Applicant's presentation 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 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. 09-04601 at 2 (App. Bd. May 11, 2011).

In his decision, the Judge weighed the available evidence, evaluated the seriousness of the disqualifying circumstances, and considered the possible application of relevant conditions and factors. He specifically discussed the decline in the housing market and the favorable whole-person evidence present in the record, but reasonably explained why there was insufficient mitigating evidence to overcome the government's security concerns. Decision at 2-6. 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). Therefore, 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