

KEYWORD: Guideline F

DIGEST: Applicant challenges some of the findings of fact. While the Judge may have overstated the amount of time Applicant was dependent on his brother the Judge's basic point was factually accurate. Adverse decision affirmed.

CASENO: 11-01355.a1

DATE: 03/13/2012

DATE: March 13, 2012

In Re:)
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 -----) ISCR Case No. 11-01355
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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 April 8, 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 January 19, 2012, after the hearing, Administrative Judge David M. White 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 adverse security clearance decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable security clearance decision.

The Judge made the following findings of fact: Applicant is 33 years old. He was employed from July 2002 through July 2009, and has essentially been unemployed since then. In 2006, he married his girlfriend of six years. He is recently divorced, after separating from his wife in February 2008. His two stepsons, ages 17 and 15 live with Applicant while the two sons he fathered, ages 8 and 7, live with his former wife. In 2006, Applicant and his wife purchased a home with a first mortgage of \$174,000 and a second mortgage of \$43,500. In February 2008, the adjustable rate on the mortgages caused the monthly payments to increase from around \$1,400 to \$2,300 per month. Applicant could not afford to make these payments, fell behind, and eventually stopped making mortgage payments altogether. The home eventually went into foreclosure, and the first mortgage holder sold the property for \$163,000. Neither mortgage holder has attempted to collect the remaining deficiency balances. When Applicant can afford to, he intends to contact the second mortgage holder to arrange resolution of that debt.

Applicant’s wife abruptly left him and her two older sons in early February 2008. Prior to that time, he had been working up to 70 hours a week and earning enough money to pay his bills. His older stepson was having some behavior problems, so he could not continue to work such long hours and leave the stepson home after school. At the same time, the economic downturn reduced the demand for his services as a carpenter. Applicant purchased a vehicle for his wife with a loan in his own name prior to their separation. When they separated, his wife took the car with the understanding that she would make the loan payments. She did not do so, and abandoned the vehicle after damaging it. The car was repossessed and Applicant has made \$200 and \$100 monthly payments from July 2010 to May 2011. He continues to make \$100 per month payments, but he has missed a couple of them. He still owes at least \$10,500 on the loan as of the record’s closing. Applicant settled an overdue debt for a computer for \$987. He made final payment on September 6, 2011. Applicant owes four smaller debts, including a \$293 medical debt, \$17 and \$128 collection accounts for traffic fines, and a \$81 garbage collection bill. None of these debts have been addressed at the close of the record. Applicant has also undertaken to pay about \$3,000 in debt incurred by his stepson at the rate of \$25 per month.

In February 2008, Applicant and his two stepsons moved out of their home to live with his brother to save money. Applicant’s brother supported him financially while Applicant was out of work, providing about \$1,500 per month. During the month before the hearing, Applicant resumed

performing some irregular carpenter work and became licensed to work as a bail bond recovery agent. He hoped to begin earning about \$3,000 per month from these two jobs.

The Judge reached the following conclusions: Applicant's financial problems essentially date from February 2008 when his adjustable mortgage payments increased while his income substantially decreased due to reduced working hours caused by the economy and his wife leaving him with responsibility for her troubled son. He became financially dependent on his brother, who helped him make payments to resolve one delinquent debt and reduce another one by \$1,500. He recently attempted to resume working, but did not demonstrate any earnings or employment prospects that might restore his ability to satisfy his debts or end his history of not meeting financial obligations. Applicant incurred substantial mortgage and automobile debt in 2006 and 2007 that exceeded his ability to repay starting in early 2008. These were voluntary decisions reflecting poor judgment and little foresight. His current lack of income precludes a finding that such circumstances are unlikely to recur or that his judgment has improved. The ongoing nature of more than \$53,800 in delinquent debt, and the failure to address debts as small as \$17, \$81, and \$128 over the past four years prevents finding significant mitigation. Applicant's financial problems were not caused by his wife leaving him since she apparently contributed little toward the family finances prior to that time. Her departure merely relieved him of support obligations toward her and their two younger children. He chose to undertake financial and parental responsibility for his wife's two older children and to reduce his work hours and income to do so. This was a generous and morally laudable decision, but one that was entirely within his control and financially unwise and irresponsible. Applicant has not undergone personal financial counseling. He has demonstrated no source of steady income or other ability to resolve more than \$53,000 in remaining delinquent debt. Applicant could not demonstrate a reasonable plan to continue resolving his debts, and does not have the means to implement such a plan in the foreseeable future. He has not yet demonstrated a sufficient pattern of financial responsibility to show that the financial concerns are unlikely to continue or recur.

Applicant asserts that the Judge misconstrued the evidence when he found that for several years Applicant has been financially dependent on his brother and without a steady source of income. Applicant states that he has been financially dependent as much as anyone is financially dependent on one's job or source of employment. He then states that he has had steady employment for several years. Applicant has failed to establish harmful error on the part of the Judge. The record evidence establishes that (a) Applicant has indeed been dependent upon his brother as the principal, if not sole means of support for more than a year, and (b) Applicant had little if any income from July 2010 until just a few weeks before the hearing. While the Judge may have overstated the amount of time that Applicant was financially dependent upon his brother, in the context of the entire record the Board concludes that this was not an error that affected the outcome of the case. The Judge's basic point that Applicant was dependent on his brother, and had no income, for an extended period is factually accurate. Applicant's representations on appeal that he was not dependent on his brother and had steady income over the period in question is not supported by the record evidence.

Applicant argues that the Judge erred by concluding that the record demonstrated Applicant's inability or unwillingness to satisfy debts, and by not applying the various Guideline F mitigating conditions in Applicant's favor. On the latter point, Applicant argues that his delinquent indebtedness was a product of circumstances beyond his control, and that he has been making payments on his debts. Applicant has failed to establish error.

Concerning the Judge's conclusion that Applicant had a history of being unable or unwilling to satisfy debts, the Board concludes that the record evidence supports the Judge. One fact relied upon by the Judge was Applicant's failure to retire longstanding debts as small as \$17 and \$81. Regarding the application of mitigating conditions, 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*. See, e.g., ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). 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. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Applicant's appeal brief essentially argues for an alternate interpretation of the record evidence. A review of the Judge's decision reveals that, regarding Guideline F, the Judge listed the potentially applicable mitigating conditions and then discussed several components of those factors in his analysis. The Judge explained in some detail that voluntary decisions made by Applicant contributed significantly to his debt arrearages, or at least his ability to retire or reduce the debts. The Judge also concluded that the circumstance of Applicant's divorce did not greatly alter his overall financial profile given the fact that his wife was not earning meaningful income before the couple's separation. The gravamen of the Judge's ultimate decision was his conclusion that Applicant had no plan to address his financial delinquencies and no apparent means to carry out the plan. The Judge's analysis is sustainable on this record

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. See, e.g., ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his 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: 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