

KEYWORD: Guideline F

DIGEST: The Judge concluded that while circumstances may have had an impact on his financial situation, Applicant did not show that he has a reasonable plan to resolve his debts. Adverse decision affirmed.

CASENO: 11-03253.a1

DATE: 04/30/2013

DATE: April 30, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-03253
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 4, 2012, DoD 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 February 7, 2013, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Wilford H. Ross denied Applicant's request for a security clearance. Applicant 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 found: At the time of the SOR, Applicant had 20 delinquent debts, totaling approximately \$42,921. One of those debts, in the amount of \$101 has been resolved. Applicant has paid off several of his debts, including some debts not alleged in the SOR. However, at the hearing, he was not always able to specify which debts had been paid off. His testimony was often confusing regarding his financial picture. Applicant has hired an attorney to represent him in filing a bankruptcy action. His debt problems were brought about by several events, including a divorce, a period of unemployment, and attempting to run two households for a time.

The Judge concluded: Applicant's financial difficulties arose beginning in about 2004 and, since he has not resolved all of the debts which caused the problems, continue to date. While circumstances may have had an impact on his financial situation, he did not show that he has a reasonable plan to resolve his debts. Applicant has taken steps toward resolving his debts, but his confusion about what debts he has paid, combined with the large amount of delinquent debt he still owes limited the mitigating effect of his actions. As of the date the record closed, Applicant still had not filed for bankruptcy. Looking at his entire financial situation, there were not clear indications that the problem was being resolved or was under control.

Applicant argues that the mitigating circumstances of his case were not evaluated fairly. He also asserts that the Judge did not use the whole-person concept to accurately depict his true person. Applicant states that he has been working diligently over the past few years to resolve his debts, and he therefore is making a good-faith effort. Applicant questions the Judge's conclusion that he lacks knowledge of his financial situation. He cites to two exhibits which show a clear plan to resolve his financial issues. Applicant asserts that by commencing a Chapter 7 bankruptcy, he is taking measures to correct permanently his debt status. He states that he has learned how to budget and live within his means.

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 Board concludes that the Judge appropriately weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and adequately discussed why the

disqualifying conduct established under Guideline F was not mitigated.

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 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 ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge 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