

KEYWORD: Guideline F

DIGEST: The Judge made a sustainable conclusion that Applicant essentially walked away from a significant financial obligation when he had the means to satisfy the debt, and this evidenced unreliability and lack of trustworthiness. Adverse decision affirmed.

CASE NO: 11-07747.a1

DATE: 02/27/2013

DATE: February 27, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-07747
)	
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 May 22, 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 December 12, 2012, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge James F. Duffy 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 is 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 35 years old. In March 2003, Applicant purchased a home for \$149,000. He was the sole owner. The home had two fixed mortgage loans. His total monthly mortgage payments were about \$1,400. After purchasing the home, Applicant lived there with his girlfriend. She contributed about \$300 to \$400 per month to their living expenses, which included the mortgage payments. At that time, Applicant's annual income was about \$40,000. The mortgage payments were about half of his monthly income. After residing together in the home for a year and a half, Applicant and his girlfriend terminated their relationship, and she moved out. At that point, he became solely responsible for the mortgage payments. In 2010, he stopped making the mortgage payments. About two months after stopping those payments, he moved from the home to an apartment closer to his place of work.

Applicant no longer wanted the expense of the home or to spend the time to keep up the maintenance on the residence. Although he could afford to make the mortgage payments, he no longer wanted to do so. After consulting with an attorney, he decided his best option was to let the home go into foreclosure. Before stopping the mortgage payments, Applicant did attempt to refinance the first mortgage loan, but those efforts were unsuccessful. After moving out of the home, he did not attempt to rent it because it was in poor condition and renting it was not economically feasible. In October 2011, Applicant hired an attorney to represent him in a short sale of the home. In March 2012, he entered into an agreement with a realtor listing the property for short sale. At the time of the hearing, Applicant had received two short sale offers, and the second short sale offer was pending final approval. Prior to the close of the record, the short sale was finally approved. The date for the closing of the short sale is not known. Applicant has no other delinquent debts.

The Judge reached the following conclusions: Applicant intentionally defaulted on two mortgage loans totaling about \$138,000. Even though he had the financial means to make the mortgage payments, he decided to stop making them in 2010 so that the property would go into foreclosure. Although the short sale will relieve him of the financial obligations arising from the two mortgage loans, such a sale neither constitutes a "good-faith" resolution of those loans nor eliminates the security concerns resulting from his default on them. Contrary to his assertion in his answer to the SOR, Applicant did "walk away" from his legal obligations on the mortgage loans. His willful default on those loans continues to cast doubt on his current reliability, trustworthiness, and good judgment. Although the downturn in the real estate market was a condition beyond the Applicant's control, his financial problems were the result of his decision to stop making the mortgage payments when he was able financially to make them. In making his decision to strategically default on the two mortgage loans, he placed his personal interests over his legal obligations and did not act responsibly under the circumstances. This calls into question his

willingness to follow the rules for properly handling classified information if doing so might conflict with his personal interests.

Applicant asserts that he agrees with the majority of the Judge's assertions and that he has made many mistakes in this matter. He admits to poor judgment, and indicates this was partially based on poor advice from legal counsel. He does fully accept the consequences of his actions. However, Applicant does not feel that his reliability and trustworthiness are in question. He points to the fact that he informed his workplace security personnel when he started the strategic default process. He believes his efforts to stay forthcoming to his superiors regarding his financial situation is evidence of his integrity and provides a reason why his security clearance should not be revoked.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. 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*. See, e.g., ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). Applicant's assertion of the forthcoming manner in which he made his superiors aware of his financial difficulties and decisions was evidence that the Judge was required to consider. However, such evidence does not mandate a favorable decision. Applicant's arguments are 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).

In this case, the Judge made a sustainable conclusion that Applicant essentially walked away from a significant financial obligation out of personal interest when he had the means to satisfy the debt, and this evidenced unreliability and lack of trustworthiness. These conclusions are supported by the record. The Judge adequately discussed why the disqualifying conduct established under Guideline F was not 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 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 Judge's decision is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board