

KEYWORD: Guideline F

DIGEST: Hearing Office decision are not binding on other Hearing Office judges or on the Appeal Board. Adverse decision affirmed.

CASENO: 11-07810.a1

DATE: 08/05/2013

DATE: August 5, 2013

In Re:	)	
	)	
-----	)	ISCR Case No. 11-07810
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Paul W. Phinney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 26, 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 that the case be decided on the written record. On May 2, 2013, after considering the record, Defense Office of Hearings and Appeals Administrative Judge Joan Caton Anthony 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.

Applicant contends that the Judge should have favorably applied the mitigating conditions and whole person factor in Applicant’s case because Applicant’s unpaid debts were not recent, she had paid off debts that had not been listed in the SOR, she had disputed some of her debts, she had engaged the services of a credit counseling agency, and she had a long work record. Applicant’s argument does not establish that the Judge erred in her application of the Directive’s conditions and factors. Applicant also asserts that the Judge did not consider evidence submitted by Applicant in response to the File of Relevant Material (FORM). The Judge explicitly cited to that evidence. *See* Decision at 4 and 7.

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. 12-09326 at 2 (App. Bd. Jun. 18, 2013).

In reaching her adverse decision, the Judge noted that Applicant had a lengthy history of financial delinquency that continued to the present time. She had not contacted creditors to resolve over \$25,000 in delinquent debt which she acknowledged as hers, even though she had not experienced reversals beyond her control and had been steadily employed by her current employer for three years. Her personal financial statement showed that she had the financial resources to pay or settle her old debts but had not done so. Additionally, the Judge found that Applicant’s disputes of her debts lacked credibility when viewed against her own admissions of the debt on her e-QIP and in her interview with an OPM investigator. Decision at 7. In light of the forgoing, the Judge could reasonably conclude that the government’s security concerns had not been mitigated. *See, e.g.*, ISCR Case No. 12-11097 at 2 (App. Bd. Jun. 20, 2013).

In her brief, Applicant cites to other Hearing Office cases, which she argues support her position that she ought to be granted a security clearance. The Board gives these cases due consideration. However, Hearing Office decisions are not binding on other Hearing Office Judges

or on the Appeal Board. *See, e.g.*, ISCR Case No. 10-05909 at 4 (App. Bd. Sep. 27, 2012). Nothing contained in the cited cases establishes error on the part of the Judge in this case.

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. After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for her decision. "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 is AFFIRMED.

Signed: Michael Y. Ra'anan  
Michael Y. Ra'anan  
Administrative Judge  
Chairperson, 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