

KEYWORD: Guideline F

DIGEST: The Board cannot consider new evidence on appeal. Applicant asserts that the Judge erred in a finding of fact. The cited error appears to be merely typographical and, therefore, harmless. An ability to argue for an alternative interpretation of the evidence is not sufficient to demonstrate that the Judge mis-weighed the evidence. Adverse decision affirmed.

CASE NO: 11-08541.a1

DATE: 07/16/2013

DATE: July 16, 2013

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 Department of Defense (DoD) declined to grant Applicant a security clearance. On August 6, 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 17, 2013, after considering the record, Defense Office of Hearings and Appeals Administrative Judge Marc E. Curry 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's adverse decision should be reversed because the evidence was sufficient to establish that he had been making reasonable efforts to resolve his financial problems. As part of his submission on appeal, he offers new evidence in the form of a narrative statement that explains his continuing actions to resolve his financial problems. The Board cannot consider this new evidence on appeal. *See* Directive ¶ E3.1.29.

Applicant also notes that the statement in the Judge's decision, that Applicant had retained a debt repayment agency in July 2012, was in error, in that he had retained the agency in 2010 and had made monthly payments of \$570 to them since that time. The Judge's statement regarding the date appears to be at most a typographical error when read in context with the other findings. The Judge based his adverse conclusions on the fact that Applicant had only "... produced documentary evidence indicating that he made two monthly payments to the credit agency between May and June of 2012" and "[h]e failed to produce any evidence of additional payments to the credit agency, or any evidence that the balance of the debts owed to any of the creditors have decreased." Decision at 2.

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. 12-11097 at 2 (App. Bd. Jun. 20, 2013).

A review of the record indicates that the Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying circumstances and considered the possible application of relevant conditions and factors. He reasonably explained why the mitigating evidence was insufficient to overcome the government's security concerns. 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. Accordingly, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his 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 under 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: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board