

KEYWORD: Guideline F

DIGEST: The Appeal Board cannot consider new evidence on appeal. A party’s ability to argue for a different interpretation of the evidence falls short of demonstrating that the Judge’s treatment of the evidence was erroneous. Adverse decision affirmed.

CASE NO: 12-00703.a1

DATE: 02/27/2014

DATE: February 27, 2014

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In Re:)	
)	
-----)	ISCR Case No. 12-00703
)	
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 June 4, 2013, 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 18, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr. 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 decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.

The Judge's Findings of Fact

The Judge made the following findings: Applicant is 32 years old. He has delinquent debts in the amount of \$19,000. Applicant went on a spending spree when he left the military in 2006, and his civilian job effectively paid less than his military salary because of the non-taxable pay and allowances he received as part of his military compensation. His finances were further complicated when he married his pregnant girlfriend and acquired a stepson along with his own son.

Applicant engaged debt counseling services and tried to work on his debts on his own, but little progress was made. He began making \$50 per month payments to some of his creditors in about November 2012. Applicant recently received a salary increase, but he has not increased his debt payments. He has no retirement account and no savings. He has received no credit or financial counseling.

The Judge's Analysis

The Judge reached the following conclusions: Applicant has yet to resolve his delinquent debt. The debt is directly attributable to Applicant's financial irresponsibility after getting out of the military. He cannot be considered to have acted responsibly in addressing his debts because the debts were due to his own conduct and he did not begin to take effective action until sometime in 2012. While his recent efforts at repayment show some good faith in attempting to resolve those debts, with the exception of one debt, the amount of his payments is insufficient to resolve his debts in the reasonably foreseeable future. Applicant's budget provides only minimal payments to his debts and he has not received financial counseling. There is no other evidence supporting a favorable clearance action.

Discussion

Applicant argues that his clearance should not have been denied. He states that he was making monthly payments for all his debts to the best of his ability and was completely honest with all parties involved with the case. He states that all of his debts have been settled as of January 8, 2014 as a result of his receipt of a gift of money from his family after the death of his grandfather.

Applicant's brief and several attachments contain evidence that was not part of the record below. The Board cannot consider new evidence on appeal. Directive ¶ E3.1.29. The record in this case closed on September 6, 2013.

Applicant focuses on his record of making payments on his debts. The Judge duly acknowledged these efforts. However, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. *See, e.g.*, ISCR Case No. 06-

25157at 2 (App. Bd. Apr. 4, 2008). 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).

In this case, the Judge made sustainable findings that Applicant had a significant history of not meeting financial obligations. He noted that despite some progress, that trend did not begin until recently and, at the time of the hearing, Applicant still had a significant amount of overdue indebtedness, with no reasonable prospect of retiring the debt for a number of years. Applicant has not demonstrated that the Judge erred when he determined that the government's concerns over Applicant's financial record were unmitigated.

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: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board