

KEYWORD: Guideline F

DIGEST: A party’s disagreement with the Judge’s weighing of the evidence is not enough to demonstrate error. Once the Government presents evidence of security concern, the applicant bears the burden of persuasion as to mitigation. Adverse decision affirmed.

CASE NO: 12-02373.a1

DATE: 01/24/2013

DATE: January 24, 2013

In Re:)	
)	
-----)	ISCR Case No. 12-02373
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 11, 2012, DOHA 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 October 24, 2012, after the hearing, Administrative Judge Claude R. Heiny 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 his financial difficulties could be traced to his and his wife's unemployment, he had paid off four of his six debts prior to the issuance of the SOR, and he had favorable character and employment references. Applicant's argument does not demonstrate that the Judge's adverse decision is arbitrary, capricious or contrary to law.

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. 10-08508 at 2 (App. Bd. Jan. 4, 2012).

In reaching his adverse decision, the Judge considered the circumstances referenced in Applicant's appeal brief, including the fact that Applicant had paid off four of his six outstanding debts. However, he noted that the four paid off debts totaled less than \$1,000, while the two remaining debts, which were attributable to the repossession of two vehicles, totaled more than \$31,000. He also noted that Applicant had received no formal financial counseling, and he had not demonstrated that his financial problems were under control and that he had a plan to bring them under control. As a result, the Judge found that "[w]ith his limited income, the two debts are likely to remain unresolved." Decision at 3,4,6, and 7. The Judge's adverse conclusions in this regard are reasonably supported by the record evidence.

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 found in favor of Applicant as to the SOR allegations stemming from the four debts that had been paid off, but reasonably explained why that mitigating evidence was insufficient to overcome the government's security concerns. *Id.* at 5-8.

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 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). The Judge's unfavorable security clearance decision is sustainable.

Order

The decision of the Judge is AFFIRMED.

Signed: Jean E. Smallin _____

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody _____

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: William S. Fields _____

William S. Fields
Administrative Judge
Member, Appeal Board