

KEYWORD: Guideline F

DIGEST: The presence of some mitigating evidence does not alone compel the Judge to issue a favorable security clearance decision. Adverse decision affirmed.

CASENO: 12-03074.a1

DATE: 05/16/2014

DATE: May 16, 2014

In Re:)	
)	
-----)	ISCR Case No. 12-03074
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Amy C. Broderick, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 10, 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 February 21, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Martin H. Mogul 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 made the following findings: Applicant is 43 years old. There are 32 overdue debts listed in the SOR. The Judge found that 2 of these debts are duplicates of one another. Twenty-seven of those debts have neither been resolved or reduced. Three of the debts have been resolved and one has been reduced. Applicant's financial difficulties began in 2003 when her husband became injured and could no longer work in construction. He was unemployed for two years. During this period, Applicant went on maternity leave for three months. Applicant and her husband gave Applicant's mother \$5,000 in approximately 2009. In 2010 she was laid off for three months. Applicant's salary has fluctuated over the years. In her current position she earns \$90,000 per year. Her husband started his own company in 2009, and his income varies.

Applicant currently has no credit cards and she is not incurring any additional overdue debts. She has never consulted any debt consolidation company, nor has she taken any kind of financial planning course. She hopes to resolve an IRS debt of about \$8,000 in a year and a half, after which she plans to contact her other creditors and try to resolve her other debts.

The Judge reached the following conclusions: Applicant's husband's injuries, medical bills, and period of unemployment could potentially make AG ¶ 20(b)¹ applicable. However, there is evidence that Applicant made an attempt to resolve only four of the 32 overdue debts listed in the SOR. She has failed to even contact the other creditors to attempt to make any kind of plan to resolve the other debts. Applicant has not acted responsibly and the mitigating condition is not applicable in this case. AG ¶ 20(c)² is not applicable since Applicant has not had any financial counseling and AG ¶ 20(d)³ is not applicable since Applicant has not initiated a good-faith effort to repay, or even contact, the vast majority of overdue creditors and has not otherwise resolved debts. No other mitigating conditions apply to this case. Additionally, Applicant has not mitigated the security concerns under the whole-person concept.

¹“[T]he conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances[.]”

²“[T]he person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control[.]”

³“[T]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]”

Applicant argues that, contrary to the Judge's findings, she has taken significant steps toward resolving her debts, all of which were incurred as a result of circumstances beyond her control. She asserts that her financial troubles are directly related to her husband's unexpected injury, and were not a result of excessive spending or credit card abuse. She states that she has been resolving her debts slowly but surely, and that she has not resorted to irrational behavior in the midst of all her family troubles. She specifically argues that AG ¶ 20(a),⁴ AG ¶ 20(b), AG ¶ 20(c) and AG ¶ 20(d), when properly applied, support a favorable decision for her. Applicant's arguments do not establish error on the part of the Judge.

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. 06-25157 at 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).

Applicant's appeal brief essentially argues for an alternate interpretation of the record evidence.

A review of the Judge's decision reveals that the Judge listed the potentially applicable mitigating conditions and then discussed the components of those factors in some detail in his analysis. The Judge offered a narrative explanation as to why the disqualifying conduct under Guideline F was not fully mitigated, including in his discussion acknowledgments of the efforts Applicant had made in resolving three debts and reducing the outstanding amount on one other. The gravamen of his decision, however, was based on the lack of evidence that Applicant had made any attempt to resolve the majority of her past-due debts or to take a financial course to aid in debt resolution. The Judge noted his concern that, aside from the four debts that were either resolved or reduced, Applicant had failed to even contact the numerous other creditors about her delinquent accounts. The conclusions of the Judge are reasonably supported by the record evidence.

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.

⁴"[T]he behavior happened so long ago, or was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment[.]"

Order

The decision of the Judge is AFFIRMED.

Signed: Michael Ra'anan
Michael 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