

KEYWORD: Guideline F

DIGEST: The Judge's material findings of fact are based on substantial evidence. A party's disagreement with the Judge's weighing of the evidence is not sufficient to demonstrate error. Adverse decision affirmed.

CASENO: 07-05434.a1

DATE: 02/24/2009

DATE: February 24, 2009

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In Re:)	
)	
-----)	ISCR Case No. 07-05434
)	
)	
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 August 13, 2008, 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 December 19, 2008, after the hearing, Administrative Judge Elizabeth M. Matchinski denied Applicant’s request for a security clearance. Applicant timely 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 under Guideline F is arbitrary, capricious or contrary to law.¹

Applicant contends that the Judge’s adverse decision should be reversed because the Judge did not give sufficient weight to Applicant’s mitigating evidence, which indicated that Applicant’s inability to satisfy his outstanding federal tax debt was due to circumstances beyond his control. He also contends that the Judge’s findings of fact give a distorted picture of his financial situation. Applicant has not demonstrated the Judge’s decision is arbitrary, capricious or contrary to law.

(1) The Board’s review of a Judge’s findings is limited to determining if they are supported by substantial evidence—such relevant evidence as a reasonable mind might accept as adequate to support such a conclusion in light of all the contrary evidence in the record. Directive ¶ E3.1.32.1. “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620, (1966). Moreover, there is a presumption that the Judge considered all the evidence unless she states otherwise. *See, e.g.*, ISCR Case No. 96-0228 at 3 (App. Bd. Apr. 3, 1997). The Judge is not required to discuss each and every piece of record evidence. *See, e.g.*, ISCR Case No. 05-03143 at 2 (App. Bd. Dec. 20, 2006).

After reviewing the record, the Board concludes that the Judge’s material findings of security concern are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Applicant has not identified any harmful error likely to change the outcome of the case. Considering the record evidence as a whole, the Judge’s material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007).

(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*. *See, e.g.*, ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). An applicant’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).

¹The Judge’s favorable finding as to SOR ¶ 1(e) is not at issue on appeal.

In this case, the Judge found that Applicant had a serious history of not meeting financial obligations. At the time the case was submitted for decision, Applicant still had a significant amount of outstanding federal tax debt, and was still trying to resolve his financial problems.² In light of the foregoing, the Judge could reasonably conclude that those problems were still ongoing. *See, e.g.*, ISCR Case No. 05-07747 at 2 (App. Bd. Jul. 3, 2007). The Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. She found in favor of Applicant as to one of the SOR allegations. However, she 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. *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 her 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)). Therefore, the Judge's ultimate unfavorable security clearance decision under Guideline F is sustainable.

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

²Applicant's house was foreclosed on in August 2007, and he owed the mortgage company over \$11,000. He had not made any payments on that debt and stated that he intended to file for bankruptcy to discharge it after he had paid other delinquent debts. Decision at 3.

Signed: James E. Moody _____

James E. Moody

Administrative Judge

Member, Appeal Board