

KEYWORD: Guideline F

DIGEST: The Judge challenged findings are supported by substantial record evidence and are sustainable. The Judge reasonably explained why the evidence in mitigation was insufficient to overcome the government's security concerns. Adverse decision affirmed.

CASENO: 07-13306

DATE: 00/19/2008

DATE: September 19, 2008

_____)	
In Re:)	
)	
-----)	ISCR Case No. 07-13306
)	
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 February 25, 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 June 19, 2008, after the hearing, Administrative Judge Shari Dam 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 issues on appeal: whether the Judge’s findings are based on substantial evidence; and whether the Judge’s adverse security clearance decision under Guideline F is arbitrary, capricious, or contrary to law.

(1) Applicant contends that the Judge erred in finding that Applicant’s financial difficulties were due in part to “a previous drinking problem.”¹ In support of that contention, he argues that he does not have “a drinking problem,” but instead has “. . . a problem with drinking beer. The problem was, and is, medical. I have peripheral neuropathy in both feet and beer exacerbates the problem.”²

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 same 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).

After reviewing the record, the Board concludes that the Judge’s findings 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) Applicant also contends that the favorable evidence in the record was sufficient, as a matter of law, to overcome any security concerns presented by his financial difficulties. Specifically, he argues that his failure to pay off his outstanding debts was not due to “procrastination,” because he “. . . has only reached the level where payment of outstanding debts was possible in the last five

¹Decision at 2. (“Applicant’s financial difficulties began occurring seven to eight years ago. He attributed them to personal problems, medical bills for his daughter’s various surgeries, a lack of sufficient income, and a previous drinking problem.”)

²Applicant’s Brief at 1-2.

or six years,” and during that time period he did pay off a substantial student loan.³ He notes that he has had excellent job performance and that he has held a security clearance without incident for 15 years. Applicant’s arguments do not demonstrate that the Judge’s decision is arbitrary, capricious or contrary to law.

The Directive presumes there is a nexus or rational connection between proven conduct under any of the Guidelines and an applicant’s security eligibility. *See, e.g.*, ISCR Case No. 02-22325 at 3-4 (App. Bd. July 30, 2004). Security clearance determinations are not limited to consideration of work performance or conduct during duty hours. *See, e.g.*, ISCR Case No. 04-08623 at 5 (App. Bd. July 29, 2005). The federal government need not wait until an applicant actually mishandles or fails to properly handle or safeguard classified information before it can deny or revoke access to such information. *See Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969). The absence of security violations does not bar or preclude an adverse security clearance decision. *See* ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005).

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 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*. 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. 07-05632 at 2 (App. Bd. May 13, 2008).

A review of the record indicates that the Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. She gave Applicant credit for debts that he had paid and found in his favor with respect to several of the factual allegations.⁴ However, she reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome the government’s security concerns. The Board does not review a case *de novo*. The favorable record 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). 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)). “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). Accordingly, the Judge’s adverse decision is sustainable.

³Applicant’s Brief at 1.

⁴The Judge also found that several of the debts listed in SOR were duplicates. The debts in paragraphs 1(a) and 1(b) were the same debts, as were the debts listed in paragraphs 1(f) and 1(m).

Order

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

Signed: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, Appeal Board

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

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board