

KEYWORD: Guideline F

DIGEST: The presence of some mitigating evidence does not alone compel a Judge to render a favorable decision. The Judge’s conclusion that Applicant had failed to mitigate the Guideline F security concerns in her case is sustainable. Adverse decisions affirmed.

CASENO: 08-03273.a1

DATE: 05/05/2009

DATE: May 5, 2009

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 08-03273
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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 22, 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 18, 2008, after the hearing, Administrative Judge Paul J. Mason 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 findings are supported

by relevant evidence; and whether the Judge's decision is arbitrary, capricious, or contrary to law. Specifically, Applicant points out factual errors in the Judge's decision. Applicant also argues that the Judge should have found her financial situation to be mitigated.

The Judge made the following pertinent findings of fact: The SOR alleges 10 debts totaling \$16,984. Prior to the hearing, Applicant admitted to three of the debts. She denied the others because she said she did not recognize the names of the creditors after the debts were sold to collection agencies. At the hearing, Applicant acknowledged the other debts.

Applicant's financial difficulties began after a serious car accident in December 1997, which caused her to lose her job. After an orthopedic surgeon inserted metal plates and screws in her limbs, he advised her to file for disability because arthritis would eventually prevent her from working. Applicant tried to find a job that would allow her to work in a seated position. She found such a job in early 2000, but lost it when the company was sold in February 2002. Applicant began receiving Social Security Disability benefits in March 2003. While Applicant was unemployed, she lived with different relatives for periods of time. Applicant found an apartment in 2003, although her income is not enough to pay her rent and her living expenses. At times, Applicant has received assistance from her sons and her sister to help her pay her expenses.

Sometime in or after September 2007, Applicant began working part-time at a job which could accommodate her medical situation. She had to stop working in May 2008 when her interim security clearance was rescinded. Applicant's supervisor and the head of human resources at that job testified on her behalf.

In her appeal, Applicant identifies statements in the Judge's decision which she considers to be erroneous. In explaining why some of the statements are incorrect, Applicant presents information which was not presented previously. The Board cannot consider new evidence on appeal. *See* Directive ¶ E3.1.29. 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.¹ Considering the record evidence as a whole, the Judge's material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 07-05434 at 2 (App. Bd. Feb. 24, 2009).

In her appeal, Applicant also argues that the Judge did not give adequate weight to her mitigating evidence. The Judge referred to Applicant's testimony and discussed the possible application of mitigating conditions in Applicant's case. 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

¹Applicant disagrees with the Judge's statement that Applicant had discovered she needed additional surgery in early 2008, whereas she states that she found she needed it in 2000 and for a reason different from that cited by the Judge. Even if Applicant had explained this earlier, it would not have changed the result here.

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. 07-00553 at 2 (May 23, 2008). The record supports the Judge’s conclusions regarding Applicant’s financial situation.

Applicant states that the hearing upset her and made her feel like a criminal. While Applicant presented an explanation for her current financial difficulties, the Judge found that explanation insufficient to support a security clearance at this time. The Judge’s decision is not a reflection on Applicant’s character.

After reviewing the record as a whole, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his 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 ultimate unfavorable security clearance decision is sustainable.

Order

The Judge’s decision denying Application a security clearance is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: Michael D. Hipple

Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board