

KEYWORD: Guideline F

DIGEST: Decisions in hearing level cases are not legally binding precedent even if a party can establish close factual similarities between the case at issue and the case already decided.. Adverse decision affirmed.

CASENO: 08-07005.a1

DATE: 02/09/2009

DATE: February 9, 2009

_____)	
In Re:)	
)	
-----)	ISCR Case No. 08-07005
)	
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 7, 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 November 25, 2008, after the hearing, Administrative Judge LeRoy F. Foreman 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 is arbitrary, capricious or contrary to law.

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 showed that Applicant’s indebtedness resulted from period of unemployment or underemployment and that Applicant was currently working with a credit counselor to resolve his financial problems.¹ In support of his contention, Applicant cites to five hearing-level cases in which applicants in ostensibly similar circumstances were granted clearances. Applicant has not demonstrated that the Judge’s decision is arbitrary, capricious or contrary to law.

The Board gives due consideration to the cases cited by Applicant. *See, e.g.*, ISCR Case No. 06-05903 at 3 (App. Bd. Oct. 15, 2007). However, the Board has previously noted that decisions in other hearing-level cases are not legally binding precedent, even if an applicant can establish close factual similarities between those cases and his case. *See, e.g.*, ISCR Case No. 04-04004 at 2 (App. Bd. Jul. 31, 2006). Accordingly, the Judge was not legally obligated to reconcile his decision in this case with decisions in other ostensibly similar cases. *See, e.g.*, ISCR Case No. 02-24752 at 3 (App. Bd. Jul. 31, 2006). “The adjudication process is the careful weighing of a number of variables known as the whole-person concept.” Directive at ¶ E2.2(a). “Each case must be judged on its own merits . . .” *Id* at ¶ E2.2(b).

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

¹In framing his argument, Applicant asserts that the Judge’s findings of fact contain statements that are “factually inconsistent” with the evidentiary record as a whole. Applicant’s Brief at 2. The Board construes Applicant’s argument in this regard as challenging the inferences and conclusions that the Judge drew from the record. There is a rebuttable presumption that the Judge considered all the record evidence unless he specifically states otherwise. *See, e.g.*, DOHA Case No. 96-0228 at 3 (App. Bd. Apr. 3, 1997). The Judge is not required to cite or discuss every piece of record evidence. *See, e.g.*, ISCR Case No. 05-03143 at 2 (App. Bd. Dec. 20, 2006). In this case, even if the Judge’s findings were changed to reflect Applicant’s interpretation of the record, the changes would not have undermined the Judge’s ultimate conclusions. *See, e.g.*, 04-00949 at 2 (App. Bd. Mar. 27, 2007).

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).

In this case, the Judge found that Applicant had a lengthy history of not meeting financial obligations.² At the time the case was submitted for decision, Applicant still had significant outstanding debts, and was still trying to resolve his financial problems.³ 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 length and seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. He found in favor of Applicant as to three of the SOR allegations.⁴ However, he 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 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). Therefore, the Judge's unfavorable security clearance decision under Guideline F is sustainable.

²"The SOR alleges 21 delinquent debts totaling about \$38,722, including 9 default judgments and two other unpaid judgments totaling \$24,511. Applicant admitted all the delinquent debts except the default judgment alleged in SOR ¶ 1.d and the four default judgments alleged in SOR ¶ 1.e." Decision at 2.

³In his appeal brief, Applicant states that at the time of the hearing, his credit counselor "had only been assisting [him] for about 60 days" and that "[h]e had not yet presented [him] with a plan because he had not yet contacted all the creditors, he had not received answers from all the creditors that he had contacted, and none of the promised written settlement offers had yet been received from those creditors who had verbally agreed to provide them[.]" Applicant's Brief at 2-3.

⁴The Judge found in favor of Applicant as to SOR paragraphs 1(d), (e), and (f). Those favorable findings are not at issue on appeal.

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