

KEYWORD: Guideline F

DIGEST: The effect an adverse decision may have on an applicant is not a material consideration in evaluating his or her security eligibility. Adverse decision affirmed.

CASENO: 11-02320.a1

DATE: 05/25/2012

DATE: May 25, 2012

In Re:)	
)	
-----)	ISCR Case No. 11-02320
)	
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 July 5, 2011, 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 September 9, 2011, the SOR was amended to include security concerns under Guideline E (Personal Conduct), Guideline G (Alcohol Consumption), and Guideline J (Criminal Conduct). On February 29, 2012, after the hearing, Administrative Judge Matthew E. Malone denied Applicant's request for a security clearance. Applicant appealed pursuant to 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. Specifically, Applicant points to his truthfulness, his job performance, and his military record. He contends that the Judge should have accorded greater weight to his evidence of mitigation.¹

The Judge found that between 2002 and 2010, Applicant had several instances of domestic violence involving his wife or son. Three of the incidents resulted in criminal convictions. Two of the events involved alcohol consumption. Applicant is on probation until 2013.

In support of his appeal, Applicant made statements which constitute new evidence. The Board cannot consider new evidence. *See* Directive, ¶ E3.1.29. *See also* ISCR Case No. 08-06875 at 2 (App. Bd. Oct. 29, 2009).

Applicant contends that the Judge's decision is arbitrary, capricious, or contrary to law, arguing that the Judge did not consider or did not give adequate weight to his truthfulness, his job performance, and his military record. Applicant also maintains that the Judge should have accorded greater weight to his explanations for his criminal record. There is a rebuttable presumption that the Judge considered all the record evidence, unless the Judge specifically states otherwise, and there is no requirement that the Judge mention or discuss every piece of record evidence when reaching a decision. *See, e.g.*, ISCR Case No. 09-01520 at 3 (App. Bd. Jan. 24, 2011). In this case, the Judge mentioned Applicant's military record. The application of disqualifying and mitigating conditions and whole-person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. Thus, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance determination. 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 demonstrate that 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. 06-23384 at 3 (App. Bd. Nov. 23, 2007).

Applicant states that loss of his job due to denial of a security clearance will have an adverse impact on him and on his employer. However, the effect that an adverse decision may have on an applicant is not a relevant or material consideration in evaluating his or her security eligibility. *See, e.g.*, ISCR Case No. 08-07528 at 2 (App. Bd. Dec. 29, 2009).

¹The Judge's favorable findings under Guideline F are not at issue on appeal.

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 Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board