

KEYWORD: Guideline F; Guideline J; Guideline E

DIGEST: The Judge was not bound, as a matter of law, either to accept or reject Applicant's explanation for her failure to disclose the pertinent information on her security clearance application. The Board may not consider new evidence on appeal. Adverse decision affirmed.

CASENO: 05-07183.a1

DATE: 06/26/2007

DATE: June 26, 2007

In Re:	)	
	)	
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SSN: -----	)	ISCR Case No. 05-07183
	)	
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 31, 2006, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations), Guideline J (Criminal Conduct) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested the case be decided

on the written record. On January 31, 2007, after considering the record, 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 erred in concluding Applicant's falsification of her security clearance application was deliberate; whether the Judge's unfavorable clearance decision under Guideline F is arbitrary, capricious, or contrary to law.<sup>1</sup>

(1) Applicant argues that she did not deliberately falsify her security clearance application by failing to disclose four prior criminal charges relating to worthless checks. In support of that argument, Applicant contends that she failed to list the charges due to an oversight, and she subsequently provided the correct information to the government once she realized the gravity of the situation. Applicant's argument does not demonstrate that the Judge erred.

The Judge had the opportunity to consider Applicant's explanation for why she failed to disclose the information in question. The Judge was not bound, as a matter of law, to accept or reject Applicant's explanation. The Judge considered Applicant's explanation in light of the record evidence as a whole, and concluded there was a sufficient basis to find that Applicant's omission was deliberate and intentional. On this record, the Judge's finding of deliberate falsification is sustainable. *See* Directive ¶ E3.1.32.1.

(2) Applicant also argues that the Judge should have concluded that the security concerns raised by her history of financial difficulties had been mitigated because her indebtedness arose from circumstances beyond her control, and she has now received counseling and started to make payments on her outstanding debts. As attachments to her brief, Applicant submits new evidence, including four character reference letters, and a letter and statement of account from her credit counseling service which indicates that she is continuing to make payments on her outstanding debts in accordance with her established plan. Applicant's arguments do not demonstrate that the Judge erred.

The Board may not consider new evidence on appeal. *See* Directive ¶ E3.1.29. Accordingly, we may not consider the attachments to Applicant's brief, and they do not demonstrate error on the part of the Judge.

"[T]here is a strong presumption against granting a security clearance." *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. The application of disqualifying and mitigating conditions does not turn simply on a finding that one or more of them apply to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole. *See, e.g.*, ISCR Case No. 01-14740 at 7 (App. Bd. Jan.15, 2003). Thus, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact,

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<sup>1</sup>The Judge's favorable finding under Guideline J is not at issue in this appeal.

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 that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law.

The Applicant has not met her burden of demonstrating that the Judge erred in concluding that the Guideline F allegations had not been mitigated. Although Applicant strongly disagrees with the Judge's conclusions, she has not established that those conclusions are arbitrary, capricious, or contrary to law. *See* Directive ¶ E3.1.32.3. We note that Applicant did not avail herself of the opportunity to submit evidence in response to the File of Relevant Material.

In this case, the Judge found that Applicant had a history of not meeting financial obligations which extended over many years. At the time the case was submitted for decision, she still had outstanding debts and was still in the process of making arrangements to repay them. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were recent and still ongoing. 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. 02-28041 at 4 (App. Bd. June 29, 2005). The Judge specifically noted Applicant's arrangement with a credit counseling service and the payment of a debt. The Board does not review a case *de novo*. Given the record that was before her, the Judge's ultimate unfavorable 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

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board