

KEYWORD: Guideline F

DIGEST: The Judge’s two erroneous factual findings are harmless. Applicant has not demonstrated that the Judge’s adverse conclusion is erroneous.

CASENO: 06-07145.a1

DATE: 03/05/2007

DATE: March 5, 2007

In Re:	)	
	)	
	)	
-----	)	ISCR Case No. 06-07145
SSN: -----	)	
	)	
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 May 16, 2006, DOHA issued a statement of reasons 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 the case be decided on the written record. On August 9, 2006, after considering the record, Administrative Judge James A. Young 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 with respect to a finding of fact; whether the Judge erred in concluding that the security concerns raised by Applicant's financial situation had not been mitigated.

### **Whether the Record Supports the Administrative Judge's Factual Findings**

A. The Administrative Judge made the following pertinent findings of fact:

In the SOR, DOHA alleged Applicant had medical bills totaling more than \$22,100 that were in collection status (¶¶ 1.a–1.g, 1.m–1.n) and past due accounts to the New Mexico Educational Assistance Foundation (NMEAF) totaling more than \$14,700 (¶¶ 1.h–1.l, 1.o). Applicant admitted each of the allegations, with explanation.

Applicant is a 25-year-old engineering assistant for a defense contractor. He graduated from college with a bachelor of science degree in May 2004.

Applicant submitted a settlement agreement with the NMEAF that shows NMEAF filed a civil action against him for failing to pay on his education loans. It appears NMEAF was willing to agree to settle the action totaling more than \$13,914, grant Applicant a forbearance for a couple of months, but resume regular payments on the debt starting in May 2006. The settlement agreement is unsigned and Applicant provided no evidence that shows he has made any payments.

From January 2004 until August 2005, Applicant was either unemployed or earned less than \$10 an hour and was unable to make payments on his outstanding medical debts. In his response to the FORM, Applicant submitted a receipt showing that he paid \$40 toward one of his medical accounts, leaving a balance of \$12.82 on that account.<sup>1</sup>

B. Discussion

The Appeal Board's review of the Judge's finding of facts is limited to determining if they are supported by substantial evidence—such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record. Directive ¶ E3.1.32.1. "This is something less than the weight of the evidence, and the possibility of drawing

---

<sup>1</sup>The Judge made statements in the conclusion section of his decision which the Board construes as additional findings of fact.

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, 621, 86 S. Ct. 1018, 16 L. Ed. 2d 131 (1966)). In evaluating the Judge's finding, we are required to give deference to the Judge's credibility determinations. Directive ¶ E3.1.32.1.

In his findings of fact, the Judge states that: "The settlement agreement is unsigned and Applicant provided no evidence that shows he has made any payments."<sup>2</sup> The Judge reiterates this finding in his conclusion, stating: "He submitted no evidence to establish the settlement with NMEAF was formalized or that he is making payments."<sup>3</sup> Applicant argues that these findings are erroneous and are a product of the Judge's misinterpretation of the record evidence. Applicant's argument has merit.

Applicant acknowledges that the copy of the settlement agreement which he attached to his Answer is the unsigned version. However, Applicant points out that he stated in his Answer to the SOR that the accounts with NMEAF had been brought current, and attached copies of February 9, 2006, March 31, 2006, and April 29, 2006 letters from NMEAF which stated that Applicant's request for a special payment arrangement had been approved. These letters also described Applicant's monthly payment plan and schedule with the NMEAF under the agreement. They were offered as evidence by the Government as part of its case, and there was no objection from the Applicant.<sup>4</sup>

Applicant's payment plan with the NMEAF provided for a forbearance period, and stated that Applicant's first payment was due May 15, 2006. Applicant's credit report, dated June 22, 2006, indicates that Applicant may have made at least one payment under the plan. Therefore, the Judge's finding that there is no evidence Applicant was making payments under the plan is erroneous. The Judge's findings that Applicant had submitted no evidence to establish the settlement with NMEAF was formalized is also erroneous. However, these errors are harmless because the Judge was not required to conclude, as a matter of law, that Applicant had mitigated the government's security concerns, based upon the record that was before him.

### **Whether the Record Supports the Administrative Judge's Ultimate Conclusions**

A Judge is required to "examine the relevant data and articulate a satisfactory explanation for" the 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 Appeal Board may reverse the Administrative Judge's decision to grant, deny, or revoke a security clearance if it is arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. Our scope of review under this standard is narrow, and we may not substitute our judgment for that of the Administrative Judge. We review matters of law *de novo*.

---

<sup>2</sup>Decision at 2.

<sup>3</sup>Decision at 3.

<sup>4</sup>File of Relevant Material (FORM), Item 3 at 1, 11-15.

Applicant contends that the Judge erred in concluding that the security concerns raised by his history of financial difficulties had not been mitigated. In support of that contention, Applicant argues that his unpaid debts are not recent, that they had resulted from circumstances beyond his control, and were therefore isolated incidents. He also argues that he has initiated a good-faith effort to pay off the debts he acknowledges and is disputing the others. The Board does not find these arguments persuasive.

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. 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, 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.

The Applicant has not met his burden of demonstrating that the Judge erred in concluding that the financial considerations allegations had not been mitigated. Although Applicant strongly disagrees with the Judge's conclusions, he has not established that those conclusions are arbitrary, capricious, or contrary to law. *See* Directive ¶ E3.1.32.3. Moreover, the Board has previously noted that it is reasonable to expect applicants to have documentation about efforts to satisfy specific debts. *See* ISCR Case No. 03-23511 at 2 (App. Bd. Feb. 15, 2006).

In this case, the Judge found that Applicant had a lengthy history of not meeting financial obligations. At the time the case was submitted for decision, Applicant still had approximately \$22,000 in unpaid debts for medical expenses, and almost \$14,000 in unpaid debts for education loans for which he had only recently negotiated a repayment plan. Regarding his medical debts, Applicant had documented the payment of only one small debt in the amount of \$40. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing. *See* ISCR Case No. 03-26213 at 2 (App. Bd. Aug. 23, 2006). 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 mitigating conditions. The Judge articulated a rational basis for not applying the mitigating conditions in this case, and 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 Administrative 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). Given the record that was before him, the Judge's ultimate unfavorable clearance decision under Guideline F is sustainable.

**Order**

The Judge's unfavorable security clearance decision 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