

KEYWORD: Guideline F; Guideline J; Guideline E

DIGEST: The Board reviews a Judge's decision in its entirety, not just isolated sentences, to discern what the Judge found and concluded. Absent unusual circumstances as errors in the synopsis of a Judge's decision are unlikely to be harmful. Adverse decision affirmed.

CASENO: 06-23384.a1

DATE: 11/23/2007

DATE: November 23, 2007

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 06-23384
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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 March 29, 2007, 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 a hearing. On July 11, 2007, after the hearing, Administrative Judge Noreen A. Lynch 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 erred as to her findings; whether the Judge erred by concluding that the security concerns raised under Guidelines F and J had not been mitigated.¹

(1) Applicant argues that the Judge erred with respect to two of her findings: (a) in the synopsis the Judge stated that \$13,000 in delinquent debt had been incurred, when only \$7,844 had been incurred, and (b) in the decision she stated Applicant had approximately \$45,000 in car loans and about \$1,000 in monthly payments, instead of \$38,000 in car loans and \$788 in monthly payments.

The Board reviews a Judge’s decision in its entirety, not just isolated sentences, to discern what the Judge found and concluded. *See, e.g.*, ISCR Case No. 02-30587 at 3 (App. Bd. Jun. 15, 2005). Absent unusual circumstances, any flaws or errors in the synopsis of a Judge’s decision are not likely to be harmful. *See, e.g.*, ISCR Case No. 02-23336 at 3-4 (App. Bd. May 10, 2004). In this case, the delinquent debts in question were accurately discussed in the body of the Judge’s decision, so any error in the synopsis would be harmless. *See, e.g.*, ISCR Case No. 05-03846 at 4 (App. Bd. Nov. 14, 2006). With respect to the amount of Applicant’s car loans and monthly payments, even if each of the challenged findings were changed to reflect Applicant’s interpretation of the record evidence, it would not have undermined the Judge’s ultimate conclusions. Therefore, any such error would be, at most, harmless. *See, e.g.*, ISCR Case No. 04-00949 at 2 (App. Bd. Mar. 27, 2007); ISCR Case No. 05-08459 at 2, n. 1 (App. Bd. Nov. 16, 2006).

The Board’s review of a Judge’s findings is limited to determining if they are supported by substantial evidence—such relevant evidence as a reasonable mind might accept as adequate to support such 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 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, 620, (1966). The Board does not review a case *de novo*. Applicant has not met his burden of demonstrating that the Judge’s material findings as to Applicant’s conduct of security concern do not reflect a reasonable or plausible interpretation of the record evidence. Considering the record evidence as a whole, the Judge’s material findings of security concern are supported by substantial evidence and are sustainable.

¹The Judge found in favor of Applicant with respect to SOR paragraphs 1.a and 3a. Those favorable findings are not at issue on appeal.

(2) Applicant also argues 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: (a) Applicant's indebtedness was not excessive; (b) the disqualifying conduct was isolated and not recent; (c) there were clear indications that the problem was being resolved or under control; and (d) Applicant had initiated a good faith effort to repay the overdue creditors or otherwise resolve the debts. In support of his argument, Applicant cites to other DOHA Hearing Office decisions, including one by the same Judge, in which applicants in ostensibly similar circumstances had been granted a clearance or trustworthiness designation. Applicant's arguments do not demonstrate error on the part of the Judge.

The Board gives due consideration to the Hearing Office cases which Applicant has cited in his appeal brief. However, the decision in another Hearing Office case is not legally binding precedent on Hearing Office Judges or the Board, even if an applicant can establish close factual similarities between the cases. *See, e.g.*, ISCR Case No. 04-04004 at 2 (App. Bd. Jul. 31, 2006). Therefore, the Judge was not legally obligated to reconcile her decisions in this case with Hearing Office decisions in other ostensibly similar cases. *See, e.g.*, ISCR Case No. 02-24752 at 3 (App. Bd. Jul. 31, 2006). Under the Directive, the Judges was required to use a whole person analysis, which evaluated the totality of the individual circumstances of Applicant's case, in reaching her determination as to his security eligibility.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. 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. *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.

In this case, the Judge found that Applicant had a lengthy and serious history of not meeting financial obligations. That history included failure to file his federal tax returns, and to pay those taxes, for two years. At the time of the hearing, Applicant was still subject to a tax lien and was still in the process of paying off his back taxes. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial 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 mitigating conditions and whole person factors. The Judge found in favor of Applicant with respect to several of the factual allegations. However, the Judge reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome all of the government's security concerns. The Board does not review a case *de novo*. Applicant is, at most, offering a plausible alternative interpretation of the record evidence. 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.*, ADP Case No. 03-14873 at 2 (App. Bd. Sep. 28, 2006). Given the record that was before her, the Judge's ultimate unfavorable security clearance

decision under Guidelines F and J 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: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board