

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant offered explanations for his failure to disclose unfavorable information of security concern on his security clearance application. The Judge appropriately considered those explanations in light of the record evidence as a whole. Applicant has not demonstrated that the Judge's finding of deliberate falsification is error. Adverse decision affirmed.

CASENO: 06-24669.a1

DATE: 03/14/2008

DATE: March 14, 2008

In Re:)	
)	
-----)	ISCR Case No. 06-24669
)	
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 2, 2007, 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). The SOR was

subsequently amended to add allegations under Guideline E (Personal Conduct). Applicant requested a hearing. On October 29, 2007, after the hearing, Administrative Judge Matthew E. Malone 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 his security clearance application was deliberate; whether the Judge erred by concluding that the security concerns raised under Guideline E had not been mitigated.¹

(1) Applicant contends that he did not deliberately falsify his security clearance application (SF-86) by failing to disclose unfavorable information of security concern in response to four different questions. In support of this contention, he argues that when he was updating his SF-86, he was advised by his facility security officer (FSO) to only correct specific information and sign the final page, and to not provide any additional adverse information. As a result, Applicant believes he is being made a "scapegoat to others not doing their job." Applicant's argument does not demonstrate that the Judge erred.

In his findings of fact, the Judge noted that Applicant had ". . . held security clearances up to and including TS/SCI continuously since 1989."² He then appropriately considered Applicant's explanation for why he failed to disclose the information in question in light of the record evidence as a whole. Based on this assessment, the Judge reasonably concluded that Applicant's claims to have relied on the guidance of his FSO were implausible: "Having extensive experience in the clearance process, Applicant knew or should have known he was responsible for his answers and statements made to the government. His assertion that an FSO knew of certain changes to be made in Applicant's questionnaire and directed those changes, but somehow limited Applicant from updating possible adverse information, taken together with all of the evidence of his delinquent debts, is simply untenable and strains credulity."³ On this record, the Judge's findings of deliberate falsification are sustainable. *See* Directive ¶ E3.1.32.1; ISCR Case No. 04-03849 at 2-3 (App. Bd. Jan. 26, 2006).

(2) Applicant also contends that the Judge erred in concluding that the security concerns raised by his falsifications had not been mitigated, based upon the favorable record evidence, particularly his lengthy military and civilian service, his many years of holding a security clearance without adverse incident, and his favorable life changes since 2003. Again, Applicant has not demonstrated that the Judge erred.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. 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

¹The Judge found in favor of Applicant under Guideline F. That favorable finding is not at issue on appeal. As part of his appeal, Applicant submits evidence which was not considered in the proceeding below. The Board cannot consider new evidence on appeal. Directive ¶ E3.1.29.

²Decision at 3.

³*Id* at 10.

the unfavorable evidence, or *vice versa*. See, e.g., ISCR Case No. 06-17691 at 3 (App. Bd. Jul. 19, 2003). 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 weighed the mitigating evidence offered by Applicant against the recency 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 under Guideline F. However, the Judge reasonably explained why the evidence which Applicant had presented in mitigation was insufficient to overcome the government's other security concerns. The Board does not review a case *de novo*. 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. Jun. 29, 2005). Given the record that was before him, the Judge's ultimate unfavorable clearance decision under Guideline E 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