

KEYWORD: Guideline F, Guideline E

DIGEST: The mere presence of some mitigating evidence does not alone compel a favorable security clearance decision. Adverse decision affirmed.

CASENO: 06-25157.a1

DATE: 04/04/2008

DATE: April 4, 2008

In Re:	)	
	)	
-----	)	ISCR Case No. 06-25157
	)	
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 March 16, 2007, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 20, 2007, after the hearing, Administrative Judge Paul J. Mason 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 by concluding that the security concerns raised under Guidelines F and E had not been mitigated.

Applicant argues that the Judge’s adverse decision should be reversed because the Judge did not give sufficient weight to Applicant’s mitigating evidence, including his assertions that he was unaware of his outstanding indebtedness and that he subsequently made efforts to remedy his financial problems. In that regard, Applicant takes issue with the fact that the Judge’s Formal Findings did not give him credit for twelve of eighteen debts he had paid off and that two additional debts involved the same account. Applicant’s arguments do not establish the Judge erred.

As part of his brief, Applicant attaches documentary evidence which he submitted to the Judge and also new documentary evidence which indicates that he has now paid off a significant amount of his outstanding debt, including \$28,951 owed to the Internal Revenue Service. The Board may not consider the new evidence on appeal. *See* Directive ¶ E3.1.29. It was not before the Judge and, therefore, does not demonstrate error on the part of the Judge. *See, e.g.*, ISCR Case No. 06-00799 at 2 (App. Bd. Apr. 16, 2007).

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. However, 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*. *See, e.g.*, ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). 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. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In this case, the Judge made sustainable findings that Applicant had a lengthy and serious history of not meeting financial obligations and had provided false information about his indebtedness in response to two different questions on his security clearance application. At the time of the hearing, Applicant still had a significant amount of overdue indebtedness that he was trying to clear up. 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. The Judge found in favor of Applicant as to a number of the SOR allegations. However, the Judge

reasonably explained why the evidence which 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 Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 2 (App. Bd. Sep. 4, 2007). Given the record that was before him, the Judge's ultimate unfavorable security clearance decision under Guidelines F and E is sustainable.

**Order**

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Jean E. Smallin  
Jean E. Smallin  
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