

KEYWORD: Guideline F; Guideline E

DIGEST: The Board may not consider new evidence on appeal. The fact that Applicant held a security clearance for 34 years without incident was important evidence for the Judge to consider, particularly when evaluating Applicant's case under the whole person concept. A lengthy track record of complying with security procedures may be a significant factor in mitigation of security concerns presented by problematic conduct or circumstances. However, the Judge is presumed all the evidence in the record. Furthermore the documents to which Applicant refer are cited in the Judge's decision. Adverse decision affirmed.

CASENO: 07-03120.a1

DATE: 01/30/2008

DATE: January 30, 2008

In Re:)
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-----) ISCR Case No. 07-03120
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)
Applicant for Security Clearance)
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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 May 4, 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 September 19, 2007, after the hearing, Administrative Judge Claude R. Heiny 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 which showed that Applicant’s indebtedness had resulted from circumstance beyond his control (medical problems) and that he had held a security clearance for 34 years without incident. Applicant also argues that his financial problems no longer present a security concern because he obtained a Chapter 7 discharge in bankruptcy subsequent to the hearing. Applicant’s arguments do not demonstrate that the Judge erred.

The Board may not consider new evidence on appeal. *See* Directive ¶ E3.1.29. Therefore, the Board may not consider Applicant’s assertions relating to his subsequent discharge in bankruptcy. That evidence 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).

The fact that Applicant has held a security clearance for 34 years without incident was important evidence for the Judge to consider, particularly when evaluating Applicant’s case under the whole person concept. A lengthy track record of complying with security procedures may be a significant factor in mitigation of security concerns presented by problematic conduct or circumstances. However, the Judge is presumed to have considered all the evidence in the record unless he specifically states otherwise. *See, e.g.*, ISCR Case No. 04-08623 at 4 (App. Bd. Jul. 29, 2005); ISCR Case No. 04-08134 at 3 (App. Bd. May 16, 2005). The Judge is not required to cite or discuss every piece of record evidence. *See, e.g.*, ISCR Case No. 04-01961 at 2 (App. Bd. Jul. 12, 2007). The evidence to which Applicant refers is found in Applicant’s Exhibit F and the transcript of the hearing. Both of those documents were referenced in the Judge’s Decision—which indicates that they had been reviewed and considered by the Judge. *See* Decision at 2-3. Therefore, on the facts of this case, Applicant has not met his burden of rebutting the presumption that the Judge considered that favorable evidence.

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. 06-23384 at 3 (App. Bd. Nov. 23, 2007). 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*. *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 found 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 owed approximately \$49,000 on 31 debts. 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 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 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: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board