

KEYWORD: Guideline F,: Guideline E

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

CASENO: 07-06551.a1

DATE: 04/30/2008

DATE: April 30, 2008

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 07-06553
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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 July 13, 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 the case be decided on the written record. On January 23, 2008, after considering the record, 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's failure to mitigate the Guideline F security concerns is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

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 the outstanding debts listed in the SOR had been either paid off, successfully disputed, or charged off and were unenforceable.¹ Applicant's arguments do not demonstrate that the Judge erred.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. 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. At the time the case was submitted for decision, Applicant still owed significant amounts on debts that had been charged off. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing. See, e.g., ISCR Case No. 06-23894 at 2 (App. Bd. Mar. 6, 2008). 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. She gave Applicant partial credit under the relevant mitigating conditions and found in his favor as to several of the SOR allegations. However, she reasonably explained why the evidence which Applicant had presented in mitigation was insufficient

¹The Judge found in favor of Applicant as to Guideline E and SOR allegations 1(b), 1(e), and 1(i). Those favorable findings are not at issue on appeal.

to overcome all of 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 her, the Judge's ultimate unfavorable security clearance decision under Guideline F 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