

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge’s material findings as to Applicant’s debts are supported by substantial record evidence and are sustainable. Adverse decision affirmed.

CASENO: 07-13491.a1

DATE: 07/18/2008

DATE: July 18, 2008

In Re:)	
)	
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)	ISCR Case No. 07-13491
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

John J. Hopkins, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 27, 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 March 14, 2008, after the hearing, Administrative Judge LeRoy F. Foreman 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 her security clearance application was deliberate; whether the Judge's unfavorable clearance decision under Guideline F is arbitrary, capricious, or contrary to law.

(1) Applicant argues that she did not deliberately falsify her response to two questions on her security clearance application by failing to disclose multiple debts that had been delinquent for more than 90 or 180 days. At the hearing she stated that she failed to disclose the information because she was under stress and misunderstood the "full impact" of the questions.¹ In her appeal brief, she states only: "In the present case there were no intentional misstatements on the application."² Applicant has not demonstrated that the Judge erred.

The Judge had the opportunity to consider Applicant's explanation for why she failed to disclose the information in question.³ The Judge was not bound, as a matter of law, to accept or reject Applicant's explanation. The Judge considered Applicant's explanation in light of the record evidence as a whole, and concluded there was a sufficient basis to find that Applicant's omissions were deliberate and intentional. On this record, the Judge's finding of deliberate falsification is sustainable. *See* Directive ¶ E3.1.32.1. His ultimate unfavorable clearance decision under Guidelines E is also sustainable.

(2) Applicant also argues that the Judge's adverse decision should be reversed because the debts alleged in the SOR were her husband's debts, not hers.⁴ In the alternative, she argues that the Judge should have concluded that the security concerns raised by her history of financial difficulties had been mitigated because the indebtedness had resulted from circumstances beyond her control, she had received counseling and there were clear indications that her financial problems were being resolved, and that she had made a good-faith effort to repay the creditors. Given the totality of the record evidence, Applicant's arguments do not demonstrate that the Judge's decision is arbitrary, capricious, or contrary to law.

A Judge's findings must be 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

¹Transcript at 45.

²Applicant's Brief at 3.

³*See, e.g.*, Transcript at 73-77.

⁴The Judge found in favor of Applicant as to the debts alleged in SOR paragraphs 1(a), 1(c) and 1(h). Those favorable findings are not at issue on appeal.

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). Considering the record as a whole, the Judge’s material findings as to Applicant’s debts are supported by substantial evidence and are sustainable.⁵

Once a concern has been articulated regarding an applicant’s security eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. The application of disqualifying and mitigating conditions does not turn simply on a finding that one or more of them apply to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole. *See* 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.” *See* ISCR Case No. 05-02833 at 2 (App. Bd. Mar. 19, 2007). “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.” *See* ISCR Case No. 05-03143 at 3 (App. Bd. Dec. 20, 2006).

Applicant has not met her burden of demonstrating that the Judge erred in concluding that the Guideline F allegations had not been mitigated. Although Applicant strongly disagrees with the Judge’s conclusions, she has not established that those conclusions are arbitrary, capricious, or contrary to law. *See* Directive ¶ E3.1.32.3.

In this case, the Judge found that Applicant had a history of not meeting financial obligations that extended over many years. At the time the case was submitted for decision she still had significant outstanding debts and was still in the process of trying to resolve her financial problems. In light of the foregoing, the Judge could reasonably conclude that Applicant’s financial problems were recent and still ongoing. 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). The Board does not review a case *de novo*. After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated

⁵Applicant admitted to the debts in SOR paragraphs 1(b), 1(d), 1(g) and 1(i) in her Answer. At the hearing she acknowledged: “Yes, I have debts.” Transcript at 42. Credit reports admitted without objection established that Applicant was individually responsible for the debts in SOR paragraphs 1(b), 1(d), 1(e) and 1(f). *See* Government Exhibit 4 (which lists accounts as “INDIV ACC” or “JOINT ACC”). Similarly, the two judgments reflected on the credit reports as pertaining to SOR paragraphs 1(g) and 1(i) name Applicant as a defendant. *See* Government Exhibits 3 and 4. In his decision, the Judge noted that: “Some of the delinquencies are in the name of Applicant’s spouse, but they affect the entire family, making Applicant vulnerable to pressure, coercion, exploitation, or duress.” Decision at 10.

a satisfactory explanation for his decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). Therefore, 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 D. Hipple
Michael D. Hipple
Administrative Judge
Member, 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