

KEYWORD: Guideline F

DIGEST: Although Applicant identifies an error in the Judge’s decision with regard to her high school graduation date, she does not identify any error likely to change the outcome of the case. Adverse decision affirmed.

CASENO: 08-01105.a1

DATE: 12/15/2008

DATE: December 15, 2008

In Re:	)	)	
	)	)	
-----	)	)	ISCR Case No. 08-01105
	)	)	
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 April 16, 2008, 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). Applicant

requested a hearing. On September 30, 2008, after the hearing, Administrative Judge Robert J. Tuidier 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 made a factual error regarding the year of her high school graduation, and whether the Judge gave proper weight to Applicant's evidence of mitigation, including the documentation Applicant submitted during the period after the hearing when the record was left open for such submissions.

Applicant requests reversal of the Judge's adverse decision, in part because the Judge stated the year of her high school graduation as 1987 instead of 1997. She also restates the circumstances of her financial difficulties. To the extent that any of that information is new evidence that was not provided at the hearing, the Board cannot consider it. *See* Directive ¶ E3.1.29. Applicant states that the Judge held the record open after the hearing for her to submit evidence of credit counseling and proof of payment of her debts. Applicant maintains that the Judge stated that he would make his decision after she submitted that documentation. She argues that she provided documentation of payment of all her debts.

The Appeal Board's review of the Judge's findings of facts is limited to determining if they are supported by substantial evidence—"such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same 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).

After reviewing the record, the Board concludes that the Judge's material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Although Applicant points out an error with regard to the year of her high school graduation, she has not identified any harmful error likely to change the outcome of the case. Considering the record evidence as a whole, the Judge's material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007).

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. In his Findings of Fact, the Judge specifically referred to Applicant's testimony of mitigating circumstances and to the documentation she submitted after the hearing. Decision at 2-5. 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, 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, e.g.*, ISCR Case No. 07-05632 at 2 (App. Bd. May 13, 2007).

A review of the record indicates that the Judge weighed the mitigating evidence offered by Applicant against her financial history and considered the possible application of relevant mitigating conditions and factors. Decision at 7-8. The Judge reasonably explained why the evidence

Applicant had presented in mitigation was insufficient to overcome the government’s security concerns. *Id.* The Board does not review a case *de novo*. The favorable 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 3 (App. Bd. Sep. 4, 2007). The Judge examined the relevant data and articulated 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, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)). “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Dep’t of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Accordingly, the Judge’s adverse decision 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