

KEYWORD: Guideline F; Guideline G

DIGEST: The Judge's weighing of the evidence was not arbitrary, capricious, nor contrary to law. The Judge did not exceed her authority to draw reasonable inferences from the record. Adverse decision affirmed.

CASENO: 08-05093.a1

DATE: 01/15/2010

DATE: January 15, 2010

_____)	
In Re:)	
)	
-----)	ISCR Case No. 08-05093
)	
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 January 24, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of

the basis for that decision—security concerns raised under Guideline F (Financial Considerations), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 21, 2009, after the hearing, Administrative Judge Elizabeth M. Matchinski denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge mis-weighed the record evidence; and whether the Judge’s adverse security clearance decision is arbitrary, capricious, or contrary to law.¹ Finding no error, we affirm.

The Judge found that Applicant is a network engineer employed by a Defense contractor. He had several delinquent credit card debts. Applicant also had judgements against him due to his failure to pay fines, costs, and administrative surcharges resulting from several offenses over the course of twenty years. These offenses included operating a vehicle under the influence of alcohol, driving under a suspended license, etc. Additionally, and also as a consequence of his numerous offenses, Applicant’s driver’s license had been suspended. The periods of suspension were as follows: (1) October 1984 to April 1985; (2) November 1985 to February 2004; and (3) February 2005 to February 2007.

In completing his security clearance application (SCA), Applicant did not disclose several of his debts that had been delinquent more than 180 days. In the Analysis portion of the decision, the Judge concluded that, in light of the entire record, Applicant’s omissions were deliberate. “A good-faith effort to comply would require at a minimum that he disclose generally that he had fallen seriously past due on credit card balances within the past seven years and that he owed surcharges to state X that continued to mount because of his history of late payments.” Decision at 12.

Applicant contends that the Judge did not consider the extent to which he is paying down his debts. Applicant also contends that the Judge extended too much weight to evidence that he took an overseas trip though in debt, that he has acquired new debts in the form of loans for an advanced degree, and that Applicant’s security manager did not recall being advised of omissions on the SCA.² We have examined these contentions in light of the record.

A Judge is presumed to have considered all the evidence in the record. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009); ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008). In this case, the Judge explicitly considered Applicant’s repayment efforts, but she further explained why these efforts were not sufficient to mitigate the Guideline F security concerns. For

¹The Judge resolved the Guideline G concerns in Applicant’s favor. Therefore, they are not at issue in this appeal.

²“A: I informed [FSO] that I omitted some information . . . and she said keep all your documentation, keep the credit reports because you will be contacted . . . Q: . . . And you don’t have any sort of statement from your FSO to confirm this conversation that you had with her, is that right? A: . . . [S]he cannot recall the conversation . . .” Tr. at 116 - 121.

example, she noted that Applicant has acquired new credit card debt, thereby undermining his claim of operating on a cash basis. Regarding Applicant's other contentions, we conclude that the Judge's weighing of the evidence is neither arbitrary, capricious, nor contrary to law. *See, e.g.*, ISCR Case No. 06-21819 at 2 (App. Bd. Aug. 13, 2009) (A party'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). Also, the Judge did not exceed her authority to draw reasonable inferences from the record. *See, e.g.*, ISCR Case No. 07-05434 at 2 (App. Bd. Feb. 24, 2009).

After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the 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)). The Judge's decision that "it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance" is sustainable on this record. Decision at 15. "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'an
Michael Y. Ra'an
Administrative Judge
Chairperson, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board