

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge concluded that Applicant's explanations for his omissions from his security clearance application were not credible. The Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence or vice versa. Adverse decision affirmed.

CASENO: 08-07904.a1

DATE: 03/03/2010

DATE: March 3, 2010

In Re:)	
)	
-----)	ISCR Case No. 08-07904
)	
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 28, 2009, 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). Department Counsel requested a hearing. On November 30, 2009, after the hearing, Administrative Judge Marc E. Curry denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the issue of whether the Judge’s decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable decision.

The Judge found that Applicant began to experience financial difficulties between 2004 and 2008, during which time Applicant accumulated approximately \$33,000 in delinquent debt. Approximately \$29,000 of the debt resulted from deficiencies arising out of the voluntary repossession of two automobiles. Applicant also has a \$2,742 tuition payment delinquency from a university. Applicant attributes his financial problems to a series of family crises, including a sibling’s cancer and subsequent death, his father’s stroke and subsequent death, and his marital separation. Applicant paid the funeral expenses of his deceased family members. Applicant recently consulted a financial counselor and has created a budget and a spending plan. Applicant completed a security clearance application in 2006. In response to a question that required disclosure of such information, Applicant did not list the fact that his security clearance had been suspended in 2000 and 2004. Applicant characterized these omissions as mistakes caused by his preoccupation with his family problems at the time he completed the application. Applicant claimed he realized his mistake shortly thereafter and intended to disclose the correct information upon meeting with an investigating agent. When Applicant met with the agent, he did not disclose the information because his mind set was not very clear at the time.

The Judge concluded that, although Applicant had recently begun satisfying some of his debts, the majority of his debts remain outstanding. Applicant has yet to make plans to begin satisfying a debt that constitutes more than a third of his total debt delinquency, and he recently missed a payment toward the satisfaction of another debt despite the fact that his budget indicates that he should have substantial income to pay his debts. The Judge also concluded that Applicant’s explanation for his omissions from his security clearance application was not credible.

Applicant argues that financial circumstances and personal conduct are not conclusive to provide an unfavorable decision to revoke or deny all security clearances. Applicant asserts that there appear to be many arguments in the Judge’s decision that are open to interpretation, which should have led to a more favorable or conditional decision. Applicant maintains that he never intentionally concealed information on his security clearance application and that his efforts at debt reduction should be mitigating. These contentions do not establish error on the part of the Judge.

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). 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. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In this case, the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. He discussed the applicability of Guideline F mitigating conditions and explained why, despite some evidence in mitigation, that mitigation was of insufficient strength to overcome the government's security concerns. The Judge stressed the facts that Applicant's debts are largely unresolved and that the amount of disposable income listed in his current budget is not an accurate barometer of Applicant's financial well-being. Regarding Guideline E, the Judge's conclusion that Applicant's explanation for why he did not reveal required information was not credible is sustainable on this record.

Applicant mentions the granting of a conditional clearance as a possible appropriate outcome for this case. Neither DOHA Hearing Office administrative judges nor the Board has the authority to grant conditional clearances. *See, e.g.*, ISCR Case No. 02-32842 at 4 (App. Bd. Nov. 29, 2004).

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). After reviewing the record, the Board concludes that 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 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 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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Jeffery D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Michael D. Hipple

Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board