

KEYWORD: Guideline F

DIGEST: The Judge's material findings are based on substantial evidence or constitute reasonable characterizations or inferences that could be drawn from the record. Adverse decision affirmed.

CASENO: 08-0190.a1

DATE: 08/19/2009

DATE: August 19, 2009

In Re:)
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 -----) ISCR Case No. 08-08190
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)
 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 December 8, 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 May 27, 2009, after the hearing, Administrative Judge Matthew E. Malone denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

On appeal, Applicant raises the following issue: whether the Judge’s decision is arbitrary, capricious, or contrary to law.

The Judge made the following relevant findings of fact: The SOR alleged that Applicant owes approximately \$17,500 for 16 delinquent debts, and Applicant admitted those debts. Applicant became aware of the extent of his debt when he was interviewed as part of his background investigation. Applicant’s wages were garnished in 2005 to satisfy a child support arrearage. Applicant satisfied the arrearage and is now current on his child support obligation. Applicant resolved a debt for unpaid rent which was incurred by his ex-wife. Other than those two obligations, Applicant has not documented any steps to resolve his delinquent debts other than hiring a company which will resolve his debts over a period of time after Applicant pays them a fee. As of the time of the hearing, Applicant could not document that the company had resolved any of his debts. Applicant attributes his financial difficulties to periods of unemployment and to marital problems in his first marriage. Applicant is highly regarded by his employer.

In his appeal brief, Applicant discusses aspects of his financial situation, and he appends two recent letters of recommendation from his employer and a letter from the debt resolution company. 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.

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. Applicant states that the Judge misunderstood the terms of his agreement with the debt resolution company. To the extent that the Judge misstated the terms of the agreement, the error is harmless, since the Judge discussed the agreement only to indicate that Applicant had not made any progress in reducing his delinquent debts through his agreement with the company as of the date of the hearing. The record supports that conclusion. Applicant 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. 08-01105 at 2 (App. Bd. Dec. 15, 2008).

Applicant argues that the Judge should have given more weight to his efforts to improve his financial situation. 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 referred to Applicant’s testimony of mitigating circumstances. Decision at 5-6. 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 his financial history and considered the possible application of relevant mitigating conditions and factors. Decision at 5-6. 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: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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