KEYWORD: Guideline F; Guideline E

DIGEST: The Judge's finding that Applicant knowingly falsified his security clearance application is sustainable. There is a rebuttable presumption that the Judge considered all the record evidence. Adverse decision affirmed.

CASENO: 08-09111.a1

DATE: 06/15/2009

DATE: June 15, 2009

In Re:	)	
	)	
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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 November 24, 2008, 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 the case be decided on the written record. On March 31, 2009, after considering the record, Administrative Judge Rita C. O'Brien denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: (1) whether certain findings of fact made by the Judge, including the finding that Applicant falsified answers on a security clearance application, are supported by the record, and (2) whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable decision.

Applicant contends that the Judge made unsupportable findings of fact, including a finding that Applicant had a 21-year-old son and including inaccurate details regarding the status of federal tax liens. The record indicates that Applicant has two children, both girls, who are listed in Applicant's 2008 security clearance application. The Judge cited this documentary evidence when making the finding that Applicant had two children, a boy and a girl. The Board notes that the name of one of the girls could be misconstrued as a masculine name. This error on the part of the Judge is harmless. Applicant also claims that the Judge's finding that Applicant incurred two separate federal tax liens in the amounts of $15,000 and $21,000 is erroneous.[1] After a review of the record evidence, the Board concludes that the Judge's findings regarding the tax liens are sustainable.

Applicant argues on appeal that he did not falsify his 2008 security clearance application. He specifically argues that the tax liens that are the subject of one of the falsification allegations do not appear on a May, 2009 credit report which he attached to his appeal brief. The 2009 credit report is new evidence, which the Board cannot consider on appeal. Directive ¶ E3.1.29. Moreover, the contents of a May 2009 credit report have no bearing on the state of Applicant's finances in April 2008, when he completed his security clearance application, nor do they have any bearing on Applicant's knowledge or state of mind at the time he completed the security clearance application. Applicant also argues that the financial events that were the subject of the falsification allegations took place in 1998, 1999, and 2000, and were thus beyond the 7-year limit imposed by the questions he supposedly provided false answers to. A review of the record reveals that the underlying federal tax delinquencies that led to the imposition of tax liens took place in 1998, 1999, and 2000. The liens themselves, however, which were the subject of the question on the security clearance application, date from 2002 and 2004.

As mentioned by the Judge, the record contains evidence that Applicant admitted to a security investigator in July 2008 that he did not disclose derogatory information about his finances on the security clearance application because he did not think the debts or the liens would appear on his credit report. The Judge reasonably treated this statement as an admission supportive of a conclusion that Applicant had the requisite intent to hide information from the government. Applicant has failed to demonstrate that the Judge's finding of falsification was unsupportable.[2]

Applicant states that the Judge's decision is misleading because it focuses on isolated

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[1]In his appeal brief, Applicant claims that the record indicates the presence of two tax liens in the amounts of $20,000 and $3,000.

[2]Applicant's arguments on appeal specifically address only the SOR allegation dealing with falsification of the tax liens. Another SOR allegation alleged falsification regarding past due debts more than 90 or 180 days delinquent. Even making allowances for his *pro se* status, Applicant does not address this allegation on appeal. There is no presumption of error below. The Judge's adverse security clearance decision is therefore sustainable on her resolution of the allegation of falsification about past due debts alone.

incidents of his past, and does not look at his full background or all of the "federal documentation" (unspecified) that exists in the case.

There is a rebuttable presumption that the Judge has considered all the record evidence unless he or she states otherwise. *See*, *e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009). That presumption is not overcome in this case, principally because Applicant does not indicate with any meaningful specificity what portions of the record the Judge failed to consider.

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). 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. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In this case, the Judge found that Applicant had a lengthy and serious history of not meeting financial obligations. At the time of the close of the record, Applicant still had substantial delinquent debts. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing. *See*, *e.g.*, ISCR Case No. 05-07747 at 2 (App. Bd. Jul.3, 2007). The Judge also reasonably concluded that the Applicant hade provided false answers about his financial history to the government. The Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct and considered the possible application of relevant mitigating conditions and whole-person factors. She found in favor of Applicant as to one of the factual allegations listed in the SOR. However, she reasonably explained why the evidence which Applicant had presented in mitigation was insufficient to overcome the government's security concerns. The Board does not review a case *de novo*.

After reviewing the record, the Board concludes that the Judge examined the relevant evidence and articulated a satisfactory explanation for her decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfs. 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 is sustainable.

Order

The decision of the Judge is AFFIRMED.

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, Appeal Board

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