

KEYWORD: Guideline F; Guideline E

DIGEST: A judge is presumed to have considered all the evidence, and a party's differing interpretation of that evidence is not sufficient to rebut that presumption. Adverse decision affirmed.

CASENO: 08-09626.a1

DATE: 08/05/2009

DATE: August 5, 2009

In Re:)	
)	
-----)	ISCR Case No. 08-09626
)	
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 12, 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 a hearing. On June 17, 2009, after the hearing, Administrative Judge Richard A. Cefola 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 erred in his application of the pertinent mitigating conditions and whether the Judge’s whole-person analysis was erroneous. Finding no error, we affirm.

The Judge found that Applicant had three delinquent debts, which raised Guideline F security concerns.¹ He concluded that Applicant had not met his burden of persuasion as to mitigation. The Board construes Applicant’s brief as contending that the Judge did not consider the entirety of the record evidence or that he did not properly weigh the evidence. A Judge is presumed to have considered all the evidence, and Applicant’s differing interpretation of the evidence, as presented in his appeal brief, is not sufficient to rebut that presumption. *See, e.g.*, ISCR Case No 07-00196 at 3 (App. Bd. Feb. 20, 2009) and ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008). The Judge’s descriptions of Applicant’s testimony as to the delinquent debts is a fair summary of the text. Furthermore, the record provides no basis to conclude that the Judge weighed the evidence 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).

The Board notes that the Judge’s discussion of his whole-person analysis is brief. Nonetheless, we cannot conclude on this record that it is erroneous.

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 national security to grant Applicant eligibility for a security clearance” is sustainable on this record. Decision at 8. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’”).

¹The Judge’s findings for Applicant under the remaining portions of paragraph 1 of the SOR, and paragraph 2, are not at issue in this appeal.

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

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

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