

KEYWORD: Guideline F; Guideline B; Guideline E

DIGEST: Applicant indicates on appeal that his monthly surplus had increased from the figures relied upon by the Judge. The record supports the Judge's finding. Applicant had the burden and the opportunity to submit evidence in mitigation. Adverse decision affirmed.

CASENO: 08-10238.a1

DATE: 12/18/2009

DATE: December 18, 2009

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In Re:)	
-----)	ISCR Case No. 08-10238
)	
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 9, 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 B (Foreign Influence), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 30, 2009, after the hearing, Administrative Judge Roger C. Wesley denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's decision is arbitrary, capricious, or contrary to law.¹ Specifically, Applicant objects to two statements made by the Judge. Applicant also contends that the Judge's decision should be reversed because Applicant successfully mitigated all the government's security concerns and because an adverse security clearance decision will have a negative impact on Applicant's financial situation and his employment prospects. Finding no error, we affirm the Judge's decision.

The Judge made the following relevant factual findings: While in college and working only part-time, Applicant accumulated a considerable amount of credit card debt and fell behind in his payments. Applicant was able to address most of those debts when he obtained full-time employment after graduation, although he also accrued new debt, which he was able to repay from his full-time salary. Upon switching to part-time employment to attend graduate school in 2001, Applicant again accumulated substantial credit card debt and fell behind on that debt. When Applicant began working full-time again in 2003, he began to address his old debts, but he did not earn enough money to repay them. The old debts became delinquent, and additional interest and penalties accrued. Applicant worked full-time between 2003 and 2006. During that time, Applicant realized that his debts had become too large for him to repay. Applicant left his full-time job in 2006 because it did not satisfy his expectations. Between 2006 and 2008, Applicant worked at small jobs and could not address his old debts. Applicant reached a settlement agreement regarding the largest debt in the SOR and documented payment of the first installment toward that agreement. At the time of the hearing, Applicant had not been able reach settlement agreements with the next two largest creditors. The Judge ruled in Applicant's favor regarding three debts in the SOR that were duplicates. Applicant did not document payment of the other debts.

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).

In his appeal, Applicant discusses steps he has taken to improve his financial situation, and he includes documentation for payments made after the closing of the record. Any remedial steps taken and any payments made after the close of the record constitute new evidence, which the Board

¹The Judge found in Applicant's favor as to Guidelines B and E and as to three of the allegations under Guideline F. Therefore, only the remaining allegations under Guideline F are in issue in this appeal.

cannot consider on appeal. *See* Directive ¶ E3.1.29. The failure to consider such new evidence does not demonstrate error on the part of the Judge. *See, e.g.*, ISCR Case No. 06-00184 at 2 (App. Bd. Oct. 9, 2007).

Applicant contests two statements in the Judge’s decision. Regarding the first, Applicant notes that the Judge correctly found in his favor as to SOR paragraph 1.a because paragraphs 1.a and 1.h represent the same debt. However, in the “Summary of Pleadings” section of his decision, the Judge did not subtract the duplicate amount from the total owed by Applicant.² Decision at 2. In the “Summary of Pleadings,” the Judge was summarizing the SOR allegations. Later in the decision, the Judge found in Applicant’s favor as to a number of the allegations. Therefore, the Judge’s statement cited by Applicant is not erroneous.

As to the other statement noted by Applicant, the Judge referenced Applicant’s monthly income and expenses and the resulting remainder. Decision at 8. Applicant indicates that, as of the time of the hearing, his monthly remainder had increased significantly. As Applicant points out, the figures stated by the Judge came from information Applicant provided in December 2008. If Applicant wished the Judge to consider that his monthly remainder had increased by the time of the hearing on June 29, 2009, Applicant could have provided that information at the hearing and in fact had the burden to do so. *See* Directive ¶ E3.1.15. The record supports the Judge’s statement in this regard.

Applicant also contends that he satisfied the government’s security concerns and that the Judge did not give adequate weight to his evidence of mitigation. 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*. 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. 07-00553 at 2 (May 23, 2008).

Finally, Applicant indicates that an adverse security clearance decision will have a negative impact on his financial situation and his employment prospects, stating that he lost the job he held at the time of the hearing and that he has found another job, but the offer is contingent on his having a security clearance. The possible effect a security clearance decision could have on an applicant’s economic situation is not relevant or material to whether a Judge’s decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 08-10079 at 3 (App. Bd. Dec. 10, 2009). *See also* ISCR Case No. 08-00899 at n.1 (App. Bd. Jul. 29, 2008). “The adverse impact of a clearance decision on an applicant is not relevant or material to an applicant’s security eligibility.”

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

²The Judge found that two other debts were duplicates of other debts in the SOR, but the amounts of those debts were small.

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 interest to grant or continue Applicant’s security clearance” is sustainable on this record. Decision at 17. *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’”).

Order

The Judge’s decision denying Applicant a security clearance is AFFIRMED.

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

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

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