

KEYWORD: Guideline F

DIGEST: Applicant failed to demonstrate that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. Applicant submitted new evidence not contained in the record, which the Board cannot consider. Adverse decision affirmed.

CASENO: 08-10491.a1

DATE: 05/11/2010

DATE: May 11, 2010

| | | |
|----------------------------------|---|------------------------|
| In Re: |) | |
| |) | |
| ----- |) | ISCR Case No. 08-10491 |
| |) | |
| 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 July 17, 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). Applicant requested a decision on the written record. On February 24, 2010, after considering the record, Administrative Judge Shari Dam denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse security

clearance decision is arbitrary, capricious, or contrary to law.¹ Finding no error, we affirm.

The Judge found that Applicant had delinquent credit card debts, unresolved at the close of the record. Applicant attributed these debts to poor financial decisions he made while young. He no longer uses credit cards. In the Analysis portion of her decision, the Judge concluded that Applicant's delinquent debts raised Guideline F security concerns. She further concluded that the record did not contain sufficient evidence of mitigation to justify the grant of a clearance. For example, the Judge concluded that there was little or no evidence to demonstrate that Applicant has behaved responsibly in regard to his debts, that he has initiated a good-faith effort to repay his creditors, or that his financial problems are behind him and are unlikely to recur. Accordingly, the Judge concluded that Applicant had failed to mitigate the security concerns in his case.

In support of his appeal Applicant has submitted new matters, for example information about his credit score obtained after the close of the record. The Board cannot consider this new evidence. *See Directive ¶ E3.1.29.* (“No new evidence shall be received or considered by the Appeal Board.”) *See also* ISCR Case No. 08-06875 at 2 (App. Bd. Oct. 29, 2009); ISCR Case No. 08-06518 at 2 (App. Bd. Mar. 3, 2009).

Applicant appears to contend on appeal that the Judge did not properly weigh his mitigating evidence, for example that he no longer uses a credit cards. However, a Judge is presumed to have considered all the evidence in the record. *See, e.g.,* ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009); ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008). In this case, the Judge found that Applicant no longer uses credit cards, and she considered other mitigating evidence as well, such as his good work record and the fact that he successfully disputed two of the debts alleged in the SOR. However, she plausibly explained why the record as a whole is not sufficient to mitigate Applicant's security concerns. Applicant's argument on appeal is not sufficient to demonstrate that the Judge weighed the record evidence in a way that is arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 06-21819 at 2 (App. Bd. Aug. 13, 2009); ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

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 adverse decision is sustainable on this record. “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).

¹The Judge's favorable findings under Guideline E are not at issue in this appeal.

Order

The Judge's adverse security clearance decision 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