

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 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) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On May 27, 2010, after considering the record, Administrative Judge David M. White 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 adverse security clearance decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge’s decision.

The Judge made the following relevant factual findings: Applicant is 61 years old. Applicant admitted owing the nine delinquent debts alleged in the SOR, which amounted to \$62,180. Applicant indicated that she had filed for bankruptcy, but did not document whether any of her debts were discharged. Except for problems she experienced at one job and two months when she could not work for health reasons, Applicant did not demonstrate that her financial problems were due to circumstances beyond her control. Applicant did not document a good-faith effort to resolve her financial problems.

Applicant states that she is appealing the Judge’s decision because “there is information left out, not well explained, or excluded mostly on [Applicant’s] part.” Applicant then goes on to explain her job history in greater detail than was contained in the record previously. The Board cannot consider that information, since it is new evidence that was not in the record below.¹ See Directive ¶ E3.1.29. Moreover, the additional information is not indicative of error on the part of the Judge, since it was not available to him when he reviewed the record.

The government’s security concern was established when Applicant admitted the debts alleged in the SOR. Applicant was responsible for providing evidence to rebut, explain, extenuate, or mitigate the security concerns and had the ultimate burden of persuasion in obtaining a favorable security clearance. See Directive ¶ E3.1.15. Applicant received instructions and a copy of the Directive when she received the SOR. Applicant had the opportunity to submit additional information when she responded to the SOR. She requested a decision on the written record without a hearing before a Judge.² After Department Counsel compiled the File of Relevant Material (FORM) for the Judge to review, Applicant had another opportunity to submit additional information

¹Along with her appeal brief, Applicant submitted evidence of her discharge in bankruptcy in December 2009 and a certificate documenting financial counseling dated the day before the Judge’s decision was issued. This information is also new evidence which the Board cannot consider.

²In her appeal, Applicant states that she expected to appear before a Judge at some point. This is difficult to understand in light of her election not to have a hearing.

for the Judge to consider, but did not respond. The fact that Applicant failed to submit some potentially relevant mitigating evidence is not indicative of any denial of procedural due process rights, since she was notified of her responsibility to do so and of the importance of doing so.

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. Considering the record evidence as a whole, the Judge's material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007).

In his Findings of Fact, the Judge specifically referred to the mitigating circumstances contained in the FORM. 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. 08-01105 at 2 (App. Bd. Dec. 15, 2008).

A review of the record indicates that the Judge weighed the mitigating evidence in the record against Applicant's financial history and considered the possible application of relevant mitigating conditions and factors. Decision at 5-6. The Judge reasonably explained why the mitigating evidence was insufficient to overcome the government's security concerns. *Id.* The Board does not review a case *de novo*. The record 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 Judge's adverse security clearance decision is affirmed

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

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

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