

KEYWORD: Guideline F

DIGEST: The presence of some mitigating evidence does not alone compel a favorable decision.. Adverse decision affirmed.

CASENO: 09-03696.a1

DATE: 06/15/2011

DATE: June 15, 2011

In Re:)
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 -----) ISCR Case No. 09-03696
)
)
 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 8, 2010, 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 March 29, 2011, after the hearing, Administrative Judge Arthur E. Marshall, Jr. 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. Consistent with the following discussion, the Board affirms the Judge’s decision.

The Judge made the following relevant factual findings: Applicant enlisted in the Army in 1996 after he graduated from high school. Applicant’s girl friend had a son while Applicant was stationed overseas. Since Applicant wanted to spend time with the child, he began asking to be released from his military enlistment. In an isolated incident, Applicant became drunk in April 1997. While inebriated, Applicant become disorderly and threatened to commit suicide. In May 1997, Applicant received an honorable discharge for “other designated physical or mental conditions, not a disability.” Decision at 2-3. In January 2010, Applicant stated in response to DOHA interrogatories that he had voluntarily separated from the military to be with his child. Applicant worked as an asset protection officer at a department store between May 1999 and February 2000. During that time, Applicant stole a comforter and a pair of clippers estimated to amount to \$300 to \$400 in value. Applicant is now married and has four children. He volunteers at church, coaches a local youth league, and helps his mother with the upkeep of her home. He is valued at work and receives superior job performance ratings.

The SOR alleges 26 debts, most dating from 2000-2005. At that time, Applicant’s income was \$30,000 to \$40,000, not enough to cover his living expenses and child support obligations; and his wife’s employment was sporadic during that period. Between 2005 and 2007, Applicant worked two jobs to settle some of his debts. Applicant now earns \$82,000, and he has improved his financial situation significantly. Applicant has paid, or is making payments toward, 19 of the 26 debts. He has disputed some of the delinquencies, and he has demonstrated that four of the debts belong to his father, who has the same name. Applicant has received financial counseling and is enrolled in a credit restoration program. The Judge found in Applicant’s favor with regard to all of the debts.

Applicant argues that the Judge’s adverse decision is arbitrary, capricious, and contrary to law. In his appeal brief, Applicant presents information regarding his high level of responsibility and his accomplishments at work.¹ Applicant argues that the Judge did not give adequate weight to the evidence he presented in mitigation. Applicant has not demonstrated error on the part of the Judge, since the presence of some mitigating evidence does not alone compel the Judge to make a

¹ To the extent that this information was not in the record below, the Board cannot consider it, since it constitutes new evidence. *See* Directive ¶ E3.1.29.

favorable security clearance determination. As the trier of fact, the Judge must 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 that 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. 08-11983 at 2 (App. Bd. Jan. 28, 2011).*

In this case, the Judge found in Applicant's favor with regard Guideline F and one allegation under Guideline E. The Judge found against Applicant under four allegations under Guideline E. The Judge discussed the possible application of the relevant mitigating conditions. Decision at 9-12. The Judge reasonably explained the mitigating evidence under Guideline E was insufficient to satisfy 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 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 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 adverse decision under Guideline E is sustainable on this record. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Order

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

Signed: Michael Y. Ra'anan

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

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board