

KEYWORD: Guideline F; Guideline E

DIGEST: Judge’s material findings of security concern were supported by substantial record evidence. Judge reasonably explained why he concluded that Applicant had failed to mitigate the security concerns in Applicant’s case. Adverse decision affirmed.

CASE NO: 09-05398.a1

DATE: 01/13/2011

DATE: January 13, 2011

In Re:)	
)	
-----)	ISCR Case No. 09-05398
)	
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 20, 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 decision on the written record. October 29, 2010, after considering the record, Administrative Judge LeRoy F. Foreman denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

On appeal, Applicant argues that the Judge’s decision denying him a security clearance is arbitrary, capricious, or contrary to law. Consistent with the following discussion, the Board affirms

the Judge's decision.

The Judge made the following factual findings: Applicant is 47 years old; he married in 1988 and divorced in 2007. In his response to the SOR, Applicant admitted two of the four debts alleged. One was an unpaid judgment with a balance of about \$5,800, and the other a delinquent credit card account with a balance of \$6,301. Applicant hired a debt settlement service to resolve the second debt, but provided no documentation of payments. Applicant denied the other two debts, but he provided no documentation to support the denial. Applicant has resolved several other debts not alleged in the SOR. When Applicant filled out his security clearance application, he denied having any unpaid judgments or debt delinquencies of over 90 or 180 days in the last seven years.

In his appeal brief, Applicant recounts his continuing efforts to pay off his debts. The brief includes two letters of recommendation and a credit report dated December 6, 2010. The Board cannot consider that information since it is new evidence that was not in the record below. *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 concerns were established, in part, when Applicant admitted two of 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 decision. *See* Directive ¶ E3.1.15. Applicant received instructions and a copy of the Directive when he received the SOR. Applicant had the opportunity to submit additional information when he responded to the SOR. He requested a decision on the written record without a hearing before a Judge. After Department Counsel compiled the File of Relevant Material (FORM) for the Judge to review, Applicant had another opportunity to submit additional information for the Judge to consider, and he did submit some evidence. The Judge concluded that Applicant did not meet his burden of persuasion.

The Appeal Board's review of the Judge's factual findings 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. 09-02239 at 3 (App. Bd. Aug. 19, 2010).

In his Findings of Fact, the Judge specifically referred to the mitigating circumstances contained in the FORM, including the fact that Applicant attributed his financial difficulties to the period surrounding his divorce in 2007. Decision at 2-3. 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*. 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. 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 4-6. 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.

Applicant states that loss of his job due to denial of a security clearance will have an adverse impact on his ability to continue to improve his financial situation. However, the effect that an adverse decision may have on an applicant is not a relevant or material consideration in evaluating his or her security eligibility. *See, e.g.*, ISCR Case No. 08-08373 at 3 (App. Bd. Dec. 3, 2010).

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