

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge’s finding that Applicant deliberately omitted information from his security clearance application was sustainable. The Judge’s treatment of the mitigating conditions was reasonable. Adverse decision affirmed.

CASE NO: 10-00036.a1

DATE: 08/18/2011

DATE: August 18, 2011

)	
In Re:)	
)	
-----)	ISCR Case No. 10-00036
)	
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 November 18, 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 May 31, 2011, after the hearing, Administrative Judge Marc E. Curry denied Applicant’s request for a security clearance. Applicant appealed pursuant to the 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 unfavorable decision.

The Judge made the following pertinent findings of fact: Applicant accrued \$85,000 of delinquent debt that remains outstanding. He has neither organized payment plans, nor retained a credit counselor to help him resolve these debts. Applicant failed to list any of his derogatory financial information, as required on two pertinent sections of his security clearance application that he completed in April 2009. Applicant was aware of his delinquencies when he completed the application, but chose to omit them because "they were so numerous."

The Judge reached the following conclusions: So long as Applicant's debt delinquencies are outstanding and unaddressed, he remains a security risk under Guideline F. Applicant's explanation that he was aware of his debt delinquencies, but chose not to include them on his security clearance application because they were too numerous is not credible. Applicant omitted the derogatory information with the intention of concealing it. His actions were unmitigated.

Applicant asserts that he did not consciously or deliberately fail to disclose any information requested of him by the Government. He maintains that his security clearance application was simply submitted incomplete, and the lack of completeness stemmed from his inability to obtain a detailed credit report. He claims he did not have enough time or energy to gather all the information required. Applicant requests that the word "deliberate," when used by the Judge, be removed from any and all documents concerning his security clearance application. He also states that he is working hard to resolve his debts and that deciding to pay his bills rather than filing for bankruptcy demonstrates integrity. Applicant's assertions do not establish error on the part of the Judge.

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. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Applicant's arguments concerning efforts to retire debt, and his state of mind at the time he completed his security clearance application are nothing more than an alternate view of the record evidence.

In this case, the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. He discussed the applicability of the mitigating factors listed under Guidelines F and E and indicated in some detail why the mitigating conditions did not apply. These conclusions were reasonable given the Judge's findings about the nature of Applicant's indebtedness, the circumstances under which it arose, and Applicant's failure to produce reliable evidence establishing that he is taking meaningful steps toward addressing his financial problems. Also, the Judge's conclusions regarding Applicant's failure to report his financial troubles on his security clearance application are reasonably supported by the record evidence.

Regarding Applicant's request to have the word "deliberate" excised from the record and case file, he is asking for relief that the Board is not authorized to grant, irrespective of the merits

of his request.

The Board does not review a case *de novo*. The favorable 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). 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)). "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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge 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