

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the record evidence. Neither did he demonstrate that the Judge mis-weighed the record evidence. Adverse decision affirmed.

CASE NO: 10-02576.a1

DATE: 08/30/2011

DATE: August 30, 2011

In Re:)	
)	
-----)	ISCR Case No. 10-02576
)	
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 January 6, 2011, 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 June 6, 2011, after the hearing, Administrative Judge LeRoy F. Forman denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse clearance decision is arbitrary, capricious or contrary to law.

Applicant contends that the Judge's adverse decision should be reversed because the Judge mis-weighted the evidence. Specifically, he argues that the Judge's decision did not give enough consideration to the mitigating evidence presented by Applicant, such as his Army service and his efforts to resolve his financial problems. He also states that he now wishes to hire a lawyer to represent him in his case. Applicant's presentation does not demonstrate that the Judge's decision is arbitrary, capricious or contrary to law.

Applicant was provided with written Prehearing Guidance which informed him that he had the option of representing himself without an attorney, being represented by a non-attorney personal representative of his choosing, or being represented by an attorney selected and paid for by himself. Applicant is free to hire a lawyer at any stage of the proceedings.

A review of the decision indicates that the Judge reasonably considered evidence favorable to the Applicant including such things as: his 14 years of honorable service in the Army, his history of serious medical problems that were caused or aggravated by his combat service, his marital problems, his completion of an on-line financial management course, and his consultation with a bankruptcy attorney. Decision at 2, 3, 5, 6 and 8. A Judge is presumed to have considered all the evidence in the record. *See, e.g.*, ISCR Case No. 09-06691 at 3-4 (App. Bd. Mar. 16, 2011). There is nothing in the Applicant's presentation on appeal or in the decision to rebut the presumption that the Judge fairly considered all of the evidence including evidence favorable to the Applicant.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. 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 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. 10-00278 at 2 (App. Bd. Mar. 18, 2011).

In this case, the Judge reasonably weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. Decision at 5-8. He found in favor of Applicant with respect to several of the SOR factual allegations, but reasonably explained why the mitigating evidence was insufficient to overcome all of the government's security concerns. *Id.*

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)). "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 unfavorable security clearance decision is sustainable.

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

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

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board