

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge concluded that Applicant had mitigated the Guideline F security concerns. However, he arrived at a different conclusion regarding Guideline E. He cited to evidence that Applicant had stolen money from his employer over the course of a year and that he had admitted his misconduct only when he was caught. The Judge’s conclusion that this conduct was not mitigated is supportable on this record. Adverse decision affirmed.

CASE NO: 10-08705.a1

DATE: 05/14/2012

DATE: May 14, 2012

In Re:)	
)	
-----)	ISCR Case No. 10-08705
)	
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 March 25, 2011, 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). On June 14,

2011, DOHA amended the SOR to include two additional allegations under Guideline F and an allegation under Guideline E (Personal Conduct). Applicant requested a hearing. On February 28, 2012, after the hearing, Administrative Judge Francisco Mendez denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge's credibility determination was in error and whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline F are not at issue in this appeal. Consistent with the following, we affirm.

The Judge found that Applicant had significant delinquent debt. He also found that Applicant had been fired by a previous employer in June 2009 for misuse of a company credit card. He had used the credit card for approximately a year for personal expenses unrelated to his job responsibilities. The expenses totaled about \$3,000. Applicant did not make restitution to his employer. The Judge stated that he appeared surprised when asked about restitution, stating that the employer had not requested it. He stated that he was willing to make restitution were the employer to seek it.

In the Analysis, the Judge concluded that Applicant had mitigated the Guideline F security concerns. However, he arrived at a different conclusion regarding Guideline E. He cited to evidence that Applicant had stolen money from his employer over the course of a year and that he had admitted his misconduct only when he was caught. The Judge stated that Applicant's conduct was neither minor nor of limited duration. Although Applicant was under a financial strain at the time, he apparently had sufficient funds to take a luxury cruise only two months after he lost his job. The Judge observed that Applicant took this cruise rather than pay back his employer the money he had wrongfully taken. The Judge acknowledged evidence favorable to Applicant, such as his having assumed the responsibility of supporting his wife's two teenage children, his good work record, and his expressions of remorse. However, he concluded that this evidence was not sufficient to outweigh the security concern arising from Applicant's repeated misuse of the credit card.

In his appeal brief, Applicant challenges the Judge's finding that he was surprised by the question about restitution. He states that it has been his goal to resolve all of his debts, but that this particular one had "fall[en] through the cracks." Appeal Brief at 2. Our reading of the transcript is consistent with the Judge's challenged finding. Furthermore, to the extent that he is challenging the Judge's credibility determination, we are required to give it deference unless it is unreasonable or contradicted by other evidence. *See, e.g.*, ISCR Case No. 07-10158 at 5 (App. Bd. Aug. 28, 2008) (internal citation omitted). We find no reason to disturb his credibility determination.

Applicant cites to evidence which, he believes, demonstrates that he has mitigated the security concern found against him. He points to his clean record since this offense, and his brief contains expressions of remorse similar to those in his hearing testimony. A Judge is presumed to have considered all of the record evidence. *See, e.g.*, ISCR Case No. 11-03402 at 2 (App. Bd. Mar. 29, 2012). The Judge concluded that, given the circumstances of Applicant's year-long series of thefts, his failure to make restitution, and his having taken a cruise with funds that could have been used to repay his employer, the favorable evidence which Applicant submitted was not enough to demonstrate mitigation. This conclusion is supportable on this record. Applicant has not rebutted

the presumption that the Judge considered all of the record evidence. Neither has he demonstrated that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law.

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the 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 Judge’s adverse decision is sustainable on this record. “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). *See also* Directive, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board