

KEYWORD: Guideline F

DIGEST: Applicant failed to corroborate his claim that he submitted documents not included in the record. There is a presumption of regularity and good faith by Judges as they decide cases. There is a presumption that a Judge properly considered those mitigating conditions applicable to an applicant's case. Adverse decision affirmed.

CASE NO: 11-10114.a1

DATE: 04/09/2013

DATE: April 9, 2013

In Re:	)	
	)	
-----	)	ISCR Case No. 11-10114
	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 15, 2012, DoD 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). Applicant requested a hearing. On February 12, 2013, after the close of the record, Defense Office of Hearings and Appeals

(DOHA) Administrative Judge Darlene Lokey Anderson denied Applicant's request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.<sup>1</sup>

Applicant raises the following issue on appeal: whether the Judge's decision should be reversed because the Judge erroneously failed to consider job performance reports and a letter of recommendation, and because Applicant is honest, hard working, and he got into financial difficulty solely because he got sick without insurance. For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.

The Judge found: Applicant was employed on a cruise ship in October 2005 where he had limited medical insurance which lasted as long as he was employed there. He started experiencing debilitating joint pain that forced him to quit his job. He then became very sick, experiencing lung and kidney failure. Although he had no medical insurance, he had a credit card which he used to pay for medical care. After a series of tests it was determined that he had lupus. He stayed in the hospital three weeks.

Applicant later learned that he owed a debt to the hospital in the amount of \$62,667. He did not know about this debt until an interview with a DoD investigator in June 2011. When he received the SOR, he contacted the hospital to obtain more information, but they were unable to provide him with information about his account. Upon contacting the hospital a second time because he was worried about his security eligibility, he obtained his account information. Applicant stated that he then contacted the collection agency on his account to work out an agreeable settlement offer.

The Judge concluded that Applicant has normally been a responsible individual who has a history of paying his bills on time and living within his means. However, after his medical emergency, he became tremendously delinquently indebted to one creditor. He has known about the delinquent medical account for over a year. Since then, he has done nothing more than contact the collection agency to negotiate a settlement. Although he testified that he is still in the process of working out the arrangements, he has failed to provide any documentation to corroborate his efforts at settlement negotiations or to substantiate any of his testimony. The medical emergency brings some mitigation. However, since learning of the debt, Applicant has done very little to address it, and cannot be said to have acted responsibly under the circumstances. He cannot be said to have made a good faith effort toward resolving it, nor has he shown financial rehabilitation.

At the time of the hearing, Applicant was given additional time to submit documents that could speak to his character. He notes that the Judge's decision stated that he had not submitted any documents. Applicant claims that he put a letter in the mail shortly after the hearing that contained annual performance reviews and a letter of recommendation. We have, in the past, remanded cases to the appropriate Judges for consideration of documents that applicants had submitted but which were not incorporated into the records. However, after reviewing the documents, the discussion

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<sup>1</sup>The SOR was later amended to include concerns under Guideline E (Personal Conduct). The Judge made a formal finding favorable to the Applicant on an allegation brought forth under Guideline E. That favorable finding is not challenged on appeal.

between Applicant and the Judge in the transcript (pp. 46-48), wherein the Judge asked Applicant to submit additional information about resolving the debt, and the Judge's decision, we conclude that consideration of the documents by the Judge would not likely have produced a different outcome. *See, e.g.*, ADP Case No. 09-02670 at 2 (App. Bd. Jan. 20, 2011). Furthermore, in this case, Applicant has offered nothing to corroborate his claim that he submitted additional documents. Accordingly, we find no reason to remand the case. *See, e.g.*, ISCR Case No. 10-09433 at 2 (App. Bd. Jul. 2, 2012). Insofar as the documents Applicant has attached to his appeal brief are outside the record, we cannot consider them. Directive ¶ E3.1.29.

Applicant states that he would like the Judge's decision to be reversed because he is a good, hard working and honest employee who got sick while without insurance. He asserts that he is not a person who has a lack of judgment and poor self-control. He states that he currently has minimal credit and a comfortable umbrella for emergencies. The Board construes these representations as an assertion that the Judge's decision is not supported by the record evidence, or that the Judge gave insufficient weight to matters in mitigation.

There is a presumption in favor of regularity and good faith on the part of DOHA Judges as they engage in the process of deciding cases. *See, e.g.*, ISCR Case No. 99-0019 at 5 (App. Bd. Nov. 22, 1999). Thus, there is a presumption that the Judge properly considered those mitigating conditions in the Adjudicative Guidelines that were applicable to the case. 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*. *See, e.g.*, ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). 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 appeal brief essentially argues for an alternate interpretation of the record evidence. A review of the Judge's decision reveals that, regarding Guideline F, the Judge listed a potentially applicable mitigating condition<sup>2</sup> and then discussed in her analysis why the applicability of that factor was of insufficient magnitude to effect a favorable outcome. The Board concludes that the Judge appropriately weighed the mitigating evidence in the record against the seriousness of the disqualifying conduct and adequately discussed why the disqualifying conduct established under Guideline F was not mitigated.

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 the decision, "including a 'rational connection between the facts found and the choice made.'"

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<sup>2</sup> *See* Directive, Enclosure 2 ¶ 20(b). "[T]he conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances[.]"

*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 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: Jean E. Smallin  
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