

KEYWORD: Guideline F; Guideline E

DIGEST: 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. Adverse decision affirmed.

CASENO: 14-04939.a1

DATE: 03/09/2016

DATE: March 9, 2016

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In Re: )  
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----- ) ISCR Case No. 14-04939  
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Applicant for Security Clearance )  
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 27, 2015, DoD 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 December 8, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Matthew E. Malone 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 decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable security clearance decision.

The Judge found: Applicant is 50 years old. In 2006, he was laid off from his company when it declared bankruptcy and reorganized as part of a merger. Unable to find similar work, Applicant started his own trucking and hauling business. This venture failed with the economic recession. Applicant was unemployed from late 2007 until late 2010. In 2007, Applicant filed for Chapter 13 bankruptcy protection because he was in danger of losing his home to foreclosure. Several petitions were dismissed and he eventually lost his home to foreclosure. He has outstanding delinquent debts which consist largely of unpaid parking tickets, income taxes, and homeowners association fees. Applicant established that he has paid or is close to paying each of the parking ticket debts. He is paying down one large homeowners association debt at the rate of \$1,000 per month. He also states that he is repaying income tax debts. He characterized his monthly financial status as “breaking even.”

In connection with his current job, Applicant completed a security clearance application. He had previously filled out a similar application for a trustworthiness position with the same employer. Thus, Applicant was already familiar with the questions and topics of inquiry when he completed his security clearance application. He did not disclose any of the adverse financial information in his background on the form. Applicant was later interviewed about his finances by a Government investigator. The investigator asked him about his negative answers to the financial questions on the clearance application and Applicant confirmed his answers. The investigator then confronted Applicant with information about his bankruptcy and his past-due and delinquent debts. Applicant then provided information about the causes of his financial problems and the corrective measures he had taken or intended to take. At the hearing, Applicant’s explanations included claims that he either forgot about his debts, errors occurred because his wife helped him complete the security clearance application, he was not careful with his answers, or he did not pay close enough attention to the questions because of turmoil in his life at the time.

The Judge concluded: Applicant appears to have recently paid or otherwise resolved most of the debts alleged in the SOR. However, he has failed to show that his current finances will remain sound. He still owns rental property that has not produced income in three years. He is still repaying income tax debts along with civil judgments for unpaid HOA fees. Based on financial information he provided in his testimony, he is still struggling to make ends meet each month.

Although he has taken action to resolve his debts, that action has only taken place after issuance of the SOR. He did not produce any explanatory information that would give the Government a better understanding of his current monthly finances. Applicant failed to meet his burden or persuasion in response to the Government's information about his finances.

The available information probative of Applicant's intent with regard to his completion of his security clearance application supports a conclusion that he knowingly and wilfully withheld information about his finances from his application. His testimony about why he omitted information from his application was not credible. Applicant compounded his deception by initially confirming those same false answers when he met with a Government investigator. His lack of candor creates doubts about his suitability for access to classified information. Those doubts must be resolved against Applicant.

Applicant contends that the Judge did not consider all of the evidence in the record, citing to evidence that Applicant received a credit report prior to the issuing of the SOR which did not depict any of the debts listed in the SOR. Applicant states that he acted responsibly under the circumstances when he later contacted the creditors after he was notified of his debts through interrogatories. Applicant appears to be arguing that the Judge ignored the mitigating circumstance of his acting to resolve his debts as soon as he had knowledge of them, even though his obtaining this knowledge post-dated the issuance of the SOR. Applicant's argument is not consistent with the record evidence. Applicant did testify that he was sent information about his debts after the issuance of the SOR. However, he never identified the source of the information and did not produce corroborating documentation establishing the nature of the information. The credit report referenced by Applicant that purportedly showed none of the debts listed in the SOR was never made part of the record. Moreover, the record indicates that Applicant had knowledge of his delinquent debts well before the issuance of the SOR. Portions of his testimony acknowledge this. Also, Applicant was made aware of the SOR debts through an interview with a Government investigator which took place in late 2012. Applicant affirmatively attested to the accuracy of the contents of that investigation in a set of interrogatories executed in 2014. Thus, Applicant's claim that he was not made aware of the nature of his indebtedness until after the issuance of the SOR is refuted by the record. A Judge is presumed to have considered all the evidence of record. *See, e.g.*, ISCR Case No. 08-10225 at 2 (App. Bd. May 28, 2010). Applicant's argument about when he knew about his debts does not rebut that presumption.

Applicant also argues that the Judge did not consider numerous matters in mitigation. A review of the record evidence and the Judge's decision convinces the Board that the Judge considered the mitigating aspects of the case, and specifically mentioned Applicant's periods of unemployment, his failed trucking business and the fact that Applicant had resolved or was addressing a number of his previously delinquent debts. Applicant's citation to this favorable evidence is not enough to show that the Judge ignored it.

Applicant argues that the Judge did not properly apply the mitigating factors. 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 the potentially applicable mitigating conditions and then discussed several components of those factors in his analysis. The Judge offered a narrative explanation as to why the disqualifying conduct was not mitigated. The gravamen of the Judge's decision is the fact that, despite paying off or otherwise resolving a significant portion of his debts, the timing of Applicant's efforts (post-SOR) undercuts the mitigating effect of Applicant's actions. Also, the Judge cited the lack of details in the record regarding Applicant's finances, continuing debt delinquencies, an unproductive rental property, and Applicant's statement that he was only "breaking even" as factors that create continuing doubts about his financial recovery. The Judge's conclusion that Applicant failed to overcome the Government's case is sustainable. The Board concludes that the Judge appropriately weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct.

Regarding Guideline E, Applicant argues that he was unaware of his debts prior to completing his security clearance application, again asserting his reliance on a credit report that was never made part of the record. This explanation varies from explanations that Applicant gave at the hearing. The Judge found those explanations lacking in credibility. After a review of the record and the Judge's decision, the Board concludes that the Judge's resolution of the allegation under Guideline E is sustainable.

The Board gives due consideration to the Hearing Office case that Applicant has cited. However, Hearing Office decisions are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 13-01297 at 2-3 (App. Bd. Mar. 9, 2015). The Board concludes that nothing in the cited case operates to undermine the findings and conclusions of the Judge.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. "The general standard is that a clearance may be granted only when 'clearly consistent with 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 decision of the Judge is AFFIRMED.

Signed: Michael Ra'anan  
Michael 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