

DATE: December 10, 2009

In Re:)	
)	
-----)	ISCR Case No. 08-10079
)	
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 May 18, 2009, 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). Applicant requested a hearing. On September 28, 2009, after the hearing, Administrative Judge Joan Caton Anthony denied Applicant’s request for a security clearance. Applicant appealed pursuant to 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. Finding no error, we affirm the Judge’s decision.

The Judge made the following relevant findings of fact: Applicant is 34 years old and is married with four children. In 2003, Applicant purchased a home. In 2005, Applicant purchased a second home and moved into it with his family, intending to pay the mortgage on the first home with rent from a tenant. When the tenant fell behind on her rent, Applicant fell behind on his mortgage payments for both houses. The house in which Applicant was living went through foreclosure, and Applicant now rents a home. Applicant still owes over \$90,000 to the holders of the first and second mortgages on the second home. Applicant sold the first home to an investor, who brought the mortgage payments up to date. The investor currently makes the mortgage payments, but the mortgage debt will remain in Applicant's name until the property is sold. Applicant testified that he is behind on current bills. Applicant has considered filing for bankruptcy. Applicant's father appeared as a character witness, and a family friend described the financial difficulties that Applicant experienced due to the downturn in the housing market.

The Appeal Board's review of the Judge's findings of facts is limited to determining if they are supported by substantial evidence—"such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966).

In his appeal, Applicant describes the cause of his financial circumstances and his efforts to improve the situation. To the extent that the information was not in the record below, it is new evidence, which the Board cannot consider on appeal. See Directive ¶ E3.1.29. The submission of new evidence does not demonstrate error on the part of the Judge. See, e.g., ISCR Case No. 06-00184 at 2 (App. Bd. Oct. 9, 2007).

Applicant objects to some of the Judge's statements concerning his financial situation. However, Applicant's objections are based at least in part on new evidence which was not before the Judge. After reviewing the record, the Board concludes that the Judge's material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. The statements are therefore sustainable. See, e.g., ISCR Case No. 06-24013 at 2 (App. Bd. Mar. 4, 2008).

Applicant also contends that the Judge did not give adequate weight to his evidence of mitigation. 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. 07-00553 at 2 (May 23, 2008).

Applicant requests that he be allowed time to satisfy his debts while maintaining a security clearance. This request could be construed as either (a) a request for a conditional security clearance,

or (b) an argument that the Judge's unfavorable decision should not be affirmed because it will result in adverse financial consequences for Applicant. Under the Directive, there is no authority for a Hearing Office Judge or the Board to grant a conditional security clearance. *See, e.g.*, ISCR Case No. 03-08107 at 4 (App. Bd. Sep. 13, 2005). Moreover, the possible effect a security clearance decision could have on an applicant's economic situation is not relevant or material to whether a Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 02-11570 at 8 (App. Bd. May 19, 2004). *See also* ISCR Case No. 08-00899 at n. 1 (App. Bd. Jul. 29, 2008). "The adverse impact of a clearance decision on an applicant is not relevant or material to an applicant's security eligibility." Accordingly, Applicant requests relief to which he is not entitled.

Order

The Judge's decision denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, 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