

KEYWORD: Guideline F

DIGEST: Applicant challenges a statement in the Judge’s analysis that certain circumstances were within Applicant’s control. As the Appeal Board previously stated, we do not consider individual sentences in isolation when reviewing a decision. When viewed in light of the decision as a whole, the Judge’s statement that the identified circumstances were within Applicant’s control was clearly a typographical or drafting error and is, therefore, harmless. Adverse decision affirmed.

CASENO: 16-04001

DATE: 05/17/2018

DATE: May 17, 2018

In Re:)	
)	
-----)	ISCR Case No. 16-04001
)	
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 June 28, 2017, 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 27, 2018, after the hearing, Administrative Judge Shari Dam denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact and Conclusions

The SOR alleged that Applicant had six delinquent debts totaling about \$34,000. The Judge found that five of those debts are unresolved and, for some of them, noted that Applicant failed to provide proof of payments. The Judge concluded that there was no evidence that Applicant started to address his debts seriously until he received the SOR and, while he recently began taking steps to address his debts, he failed to establish a record of responsibly paying them and of managing his finances.

Discussion

Applicant challenges a statement in the Judge’s analysis that certain circumstances were within Applicant’s control. In this regard, the Judge stated:

Applicant presented evidence to establish some mitigation under AG ¶ 20(b).^[1] His financial delinquencies arose as the result of experiencing periods of underemployment and unemployment, and suffering a serious heart attack in 2010 for which he did not have medical insurance. **These were circumstances within his control.** However, in order to establish full mitigation under this condition, he is required to provide proof that he acted financially responsible under the circumstances. There is no evidence that Applicant started to seriously address his debts until after receiving the SOR.² [Emphasis added.]

¹ Directive, Encl 2, App A ¶ 20(b) states, “the 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances[.]”

² Decision at 5.

As the Appeal Board previously stated, we do not consider individual sentences in isolation when reviewing a decision. *See, e.g.*, ISCR 11-13664 at 5 (App. Bd. Aug. 15, 2013). When viewed in light of the decision as a whole and, more specifically, within the context of the quoted paragraph, the Judge’s statement that the identified circumstances were within Applicant’s control was clearly a typographical or drafting error and is, therefore, harmless.³ *See, e.g.*, ISCR Case No. 04-03795 at 2 (App. Bd. Jan. 25, 2007).

Applicant also contends that the Judge did not properly evaluate the mitigating and whole-person evidence. For example, he highlights that the nation was experiencing a recession at the time in question, discusses the impact of his medical problem on his finances, and describes the efforts he has taken to resolve his financial problems. His arguments, however, do not rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 08-01616 at 2 (App. Bd. Jul. 7, 2009). Additionally, 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. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

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 interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Encl. 2, App A. ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

³ We note that the first sentence in the quoted paragraph reflects that the Judge considered some evidence as establishing circumstances beyond Applicant’s control under the first prong of ¶ 20(b). Logically, the second sentence would list the mitigating evidence referenced in the first sentence. Additionally, the Judge characterized Applicant’s heart attack as serious and, as a matter of common knowledge, individuals do not have control over their heart attacks. Furthermore, the placement of the word “however” in the quoted paragraph shows that the Judge was then proceeding to contrast what she considered as mitigating evidence with other evidence pertaining to the second prong of ¶ 20(b), *i.e.*, the individual acted responsibly under the circumstances. Given this context, it is clear the Judge considered Applicant’s underemployment, unemployment, and medical problem as conditions beyond his control.

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Charles C. Hale
Charles C. Hale
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board