

KEYWORD: Guideline F; Guideline E

DIGEST: There is a rebuttable presumption that the Judge has considered all the record evidence. The presence of some mitigating evidence does compel the Judge to make a favorable security clearance decision. Given the record, the Judge conclusion that applicant intentionally provided false or misleading information on his security clearance application is sustainable. Adverse decision affirmed.

CASENO: 03-07412.a1

DATE: 04/09/2007

DATE: April 9, 2007

In Re:	)	
	)	
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SSN: -----	)	ISCR Case No. 03-07412
	)	
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 September 16, 2004 DOHA 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 August 28, 2006, after the hearing, Administrative Judge Martin H. Mogul denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: whether the Judge failed to apply the “whole person” concept when evaluating his case, and whether the Judge’s decision not to apply mitigating factors in Applicant’s favor was arbitrary, capricious or contrary to law. The Board affirms the Judge’s decision.

Applicant argues that the Judge erred in not considering the “whole person” concept, and by ignoring Applicant’s stable family and work life, his honorable military career, and his efforts to take control of his financial life. Applicant also argues that the Judge erred by ignoring facts in the record which resulted in a conclusion that, ultimately, mitigation had not been established. As Applicant’s arguments about the “whole person” concept and mitigation are interrelated, they will be discussed together.

Regarding both the “whole person” analysis and mitigation, Applicant asserts that the Judge did not fully present and consider evidence favorable to him. There is a rebuttable presumption that the Judge has considered all the record evidence unless the Judge specifically states otherwise. *See, e.g.*, ISCR Case No. 01-22566 at 3 (App. Bd. June 26, 2003). Furthermore, the Judge was not required to discuss each and every piece of evidence in his decision. A review of the Judge’s decision reveals that there were significant references to evidence favorable to Applicant. Applicant has not met his burden of establishing that the Judge ignored record evidence.

The application of disqualifying and mitigating conditions and whole person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole. *See, e.g.*, ISCR Case No. 01-14740 at 7 (App. Bd. Jan. 15, 2003). Thus, the presence of some mitigating evidence does not 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*. An Applicant’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. 04-08934 at 2 (App. Bd. Aug. 17, 2006).

In this case, after a review of the record and the Judge’s decision, the Board concludes that the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct, and adequately considered the possible application of relevant mitigating conditions and whole person factors. The Judge explicitly applied one mitigating factor to Applicant’s history of overdue indebtedness under Guideline F, but articulated a rational basis for concluding that the evidence relating to the factor was not of a magnitude to support an ultimate conclusion in Applicant’s favor. Given the record that was before him, the Judge’s conclusion that Applicant had intentionally provided false or misleading information on his security clearance application is sustainable. The Judge’s decision not to apply mitigating factors to the falsification

allegations under Guideline E is also sustainable. The Judge's ultimate unfavorable clearance decision is not arbitrary, capricious or contrary to law. *See, e.g.*, ISCR Case No. 04-09488 at 2-3 (App. Bd. Nov. 29, 2006).

**Order**

The decision of the Judge denying Applicant a clearance is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board