

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge's challenged findings are supported by the record evidence. Adverse decision affirmed.

CASENO: 03-21497.a1

DATE: 07/30/2009

DATE: July 30, 2009

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In Re:)	
)	
-----)	ISCR Case No. 03-21497
)	
)	
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 November 6, 2008, 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 May 27, 2009, after the hearing, Administrative Judge Darlene D. Lokey Anderson 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 decision.

Applicant states that, contrary to the Judge’s finding that he engaged in overspending, he does not overspend. Applicant also took issue with the Judge’s statement that he only recently initiated a good faith effort to resolve his debts. Applicant asserts that he has been trying to resolve his debts in good faith for the past 20 plus years. Applicant also mentions his 35-year service to the country both in the military and civilian life, and states that he would never hurt his government in any way. Applicant’s assertions do not demonstrate error on the part of the Judge.

The Judge’s finding that Applicant and his wife engaged in overspending during the period of his financial difficulties and her finding that Applicant is just beginning the process of financial rehabilitation are reasonably supported by the record evidence. 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). A review of the record and the Judge’s decision reveals that the Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct. She considered the possible application of relevant mitigating conditions and whole-person factors. The Judge reasonably explained why the evidence which Applicant had presented in mitigation was insufficient to overcome the government’s security concerns. The Board does not review a case *de novo*. After reviewing the record, the Board concludes that the Judge examined the relevant evidence and articulated a satisfactory explanation for her decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfs. 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)). Therefore, the Judge’s ultimate unfavorable security clearance decision is sustainable.¹

¹Applicant did not make an assertion of harmful error with respect to the Judge’s formal findings under SOR ¶ 2. There is no presumption of error below. The Appeal Board’s authority to review a case is limited to matters in which the appealing party has alleged the Judge committed harmful error. *See* Directive ¶ E3.1.32.

Order

The decision of the Judge is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, Appeal Board