

KEYWORD: Guideline J; Guideline H; Guideline F; Guideline E

DIGEST: The application of the disqualifying and mitigating conditions and whole person factors does not turn simply on a finding that one more applies to the particular facts of a given case. The favorable evidence cited by Applicant is not sufficient to prove that the Judge's ultimate decision is not sustainable. Adverse decision affirmed.

CASENO: 04-12241.a1

DATE: 03/02/2007

DATE: March 2, 2007

In Re:)	
)	
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SSN: -----)	ISCR Case No. 04-12241
)	
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 July 27, 2005, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct), Guideline H (Drug Involvement), Guideline F (Financial Considerations), and Guideline E (Personal Conduct)

of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested the case be decided on the written record. On August 10, 2006, after considering the record, Administrative Judge Joseph Testan denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse clearance decision is arbitrary, capricious, or contrary to law.

Applicant elected to have his case decided on the written record, and then did not respond to the government's File of Relevant Material (FORM). On appeal he contends that the Judge misweighed the evidence—arguing that his disqualifying conduct amounted to isolated and aberrational instances when viewed in the context of his progressive life achievements. In support of that contention, Applicant argues that he is a law-abiding, hard-working individual of uprightness, morals, dignity and a model citizen. Applicant's arguments do not demonstrate error on the part of the Judge.

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. *See, e.g.*, ISCR Case No. 01-14740 at 7 (App. Bd. Jan.15, 2003). Thus, 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*. 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.

In this case, the Judge reasonably weighed the mitigating evidence contained in the FORM against the seriousness of the disqualifying conduct, and considered the possible application of relevant mitigating conditions. The Judge found in favor of the Applicant under Guideline H. However, he reasonably explained why there was insufficient mitigating evidence to overcome the government's other security concerns. The Board does not review a case *de novo*. The favorable evidence cited by the Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. Given the record that was before him, the Judge's ultimate unfavorable clearance decision under Guidelines J, F and E is sustainable.

Order

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

Signed: Jean E. Smallin

Jean E. Smallin
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