

KEYWORD: Guideline F

DIGEST: The challenged findings are based on substantial record evidence. The favorable evidence cited by Applicant is not sufficient to demonstrate that the Judge’s decision is arbitrary, capricious or contrary to law. Adverse decision affirmed.

CASENO: 05-02471.a1

DATE: 04/11/2007

DATE: April 11, 2007

In Re:)	
)	
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SSN: -----)	ISCR Case No. 05-02471
)	
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 9, 2005, 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 August 8, 2006, after the hearing, Administrative Judge Barry M. Sax

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 erred by concluding that the security concerns raised under Guideline F had not been mitigated.

Applicant argues that the Judge's adverse decision should be reversed because the Judge did not give sufficient weight to Applicant mitigating evidence which he contends demonstrates that his financial problems were due to circumstances beyond his control, and that he has now received financial counseling and established a repayment plan for his debts. Applicant also argues that the Judge erred with respect to one of his findings and there are internal inconsistencies with respect to several others. The Board does not find Applicant's arguments persuasive.

We have considered the challenged findings in light of the record and conclude that they are based on substantial evidence. To the extent that there is error in the Judge's findings we conclude that it is harmless. Applicant has not met his burden of demonstrating that the Judge's material findings with respect to his conduct of security concern do not reflect a reasonable or plausible interpretation of the record evidence. Considering the record evidence as a whole, the Judge's material findings of security concern are sustainable.

Likewise, Applicant has not met his burden of demonstrating that the Judge erred in concluding that the financial considerations allegations had not been mitigated. Although Applicant strongly disagrees with the Judge's conclusions, he has not established that those conclusions are arbitrary, capricious, or contrary to law. *See* Directive ¶ E3.1.32.3.

In this case, the Judge made sustainable findings that Applicant had a lengthy history of not meeting financial obligations, that Applicant had previously had indebtedness discharged in bankruptcy, and that Applicant had only established his current repayment plan subsequent to the hearing. In light of the foregoing, the Judge could reasonably conclude that the security concerns raised by Applicant's financial problems had not been mitigated. *See, e.g.*, ISCR Case No. 04-09248 at 2 (App. Bd. Jan. 17, 2007); ISCR Case No. 03-13768 at 4 (App. Bd. June 16, 2005).

The application of disqualifying and mitigating conditions does not turn simply on a finding that one or more of them applies 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 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.

The Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct and considered the possible application of relevant mitigating conditions. He articulated a rational basis for not applying any mitigating conditions in

this case, and reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome the government's security concerns. The Board does not review a case *de novo*. The favorable record evidence cited by Applicant is not sufficient to demonstrate the Administrative Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 02-28041 at 4 (App. Bd. June 29, 2005). Given the record that was before him, the Judge's ultimate unfavorable clearance decision under Guidelines F is sustainable. Thus, the Judge did not err in denying Applicant a clearance.

Order

The decision of the 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