

KEYWORD: Guideline F; Guideline E

DIGEST: An applicant's disagreement with the Judge's weighing of the evidence is not sufficient to demonstrate that the Judge erred. Adverse decision affirmed.

CASENO: 05-02619.a1

DATE: 03/21/2007

DATE: March 21, 2007

In Re:)	
)	
)	
-----)	ISCR Case No. 05-02619
SSN: -----)	
)	
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 August 25, 2005, 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 July 26, 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 issues on appeal: whether the Judge erred by concluding that the security concerns raised under Guideline F had not been mitigated; and whether the Judge erred in concluding Applicant's falsification of his security clearance application was deliberate.

Applicant contends that the Judge erred in concluding that the security concerns raised by his history of financial difficulties had not been mitigated. In support of that contention, Applicant essentially restates the facts of his case and provides new evidence in the form of documents which indicate that his student loans have now been rehabilitated and are no longer in default. Applicant also argues that he did not deliberately falsify his security clearance application by failing to disclose adverse information about his indebtedness. Finally, Applicant contends that the Judge misweighed the evidence, by failing to give adequate consideration to the favorable evidence. In support of that contention, Applicant notes that he served over 25 years in the military, has held a security clearance for over 27 years, and had been attempting to resolve his financial problems well before the issuance of the SOR in this case. Applicant's arguments do not demonstrate error on the part of the Judge.

The Board may not consider Applicant's new evidence on appeal. *See* Directive ¶ E3.1.29. Its submission does not demonstrate error on the part of the Administrative Judge. *See, e.g.*, ISCR Case No. 02-12789 at 3 (App. Bd. May 13, 2005).

The Judge had the opportunity to consider Applicant's explanation for why he failed to disclose the information in question on his security clearance application. The Judge was not bound, as a matter of law, to accept or reject Applicant's explanation. The Judge considered Applicant's explanation in light of the record evidence as a whole, and concluded there was a sufficient basis to find that Applicant's omission was deliberate and intentional. On this record, the Judge's finding of deliberate falsification is sustainable. *See* Directive ¶ E3.1.32.1.

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 against the seriousness of the disqualifying conduct, and considered the possible application of relevant mitigating conditions. 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. *See, e.g.*, ISCR Case No. 02-28041 at 4 (App. Bd. Jun. 29, 2005). Given the record that was before him, the Judge's ultimate unfavorable clearance decision under Guidelines F and E is sustainable.

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