

KEYWORD: Guideline F

DIGEST: A decision by another Hearing Office Judge is not legally binding on that Judge's colleagues in other cases. Nor are Hearing Office cases binding on the Board. Adverse decision affirmed.

CASENO: 05-12532.a1

DATE: 08/10/2007

DATE: August 10, 2007

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 05-12532
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

**FOR APPLICANT**

Alan V. Edmonds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 30, 2006, DOHA issued a statement of reasons 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 January 31, 2007, after the hearing, Administrative Judge Joan Caton Anthony 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 decision is arbitrary, capricious, or contrary to law. Specifically, Applicant contends that the Judge erred in weighing the evidence and that the Judge should have mitigated the negative financial information in the case. In support of his contention, Applicant submits financial documents, some of which were submitted at the hearing or immediately thereafter<sup>1</sup> and some of which constitute new evidence. Applicant also cites several Hearing Office decisions, which Applicant considers comparable to his situation, in which a favorable decision was rendered.

The Board may not consider new evidence. *See* Directive ¶ E3.1.29. Therefore, the Board may not consider evidence Applicant now submits regarding steps Applicant took subsequent to the hearing to improve his financial position. With regard to the evidence Applicant submitted during the hearing or during the two weeks immediately thereafter, there is a rebuttable presumption that the Judge considered all the record evidence unless the Judge specifically states otherwise. *See, e.g.*, ISCR Case No. 03-07245 at 4 (App. Bd. May 20, 2005).

Applicant’s citation to other decisions by Hearing Office Judges, for the proposition that other applicants in situations similar to Applicant’s have received favorable security clearance decisions, does not demonstrate error on the part of the Judge in this case. A decision by another Hearing Office Judge is not legally binding precedent on that Judge’s colleagues in other cases, even if an applicant establishes close factual similarities between the cited case and the instant case. The cited decisions are not binding precedent on the Board in any event. *See, e.g.*, ISCR Case No. 02-30535 at 5 (App. Bd. May 4, 2005).

Moreover, the application of disqualifying and mitigating conditions does not turn simply on a finding that one or more of them apply to the particular facts of a case. 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 weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate that 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. 05-02471 at 2 (App. Bd. Apr. 11, 2007).

In this case, 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. She articulated a rational basis for not applying any mitigating conditions and reasonably explained why the evidence 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 that the

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<sup>1</sup>The Judge left the record open for two weeks for the submission of additional evidence.

Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 05-04874 at 2 (App. Bd. May 23, 2007). Given the record that was before him, the Judge's ultimate unfavorable clearance decision under Guideline F is sustainable.

**Order**

The Judge's decision 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