

KEYWORD: Guideline F; Guideline E

DIGEST: 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 Board does not review a case de novo. Adverse decision affirmed.

CASENO: 06-13610.a2

DATE: 03/09/2009

DATE: March 9, 2009

In Re:)	
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Applicant for Security Clearance)	ISCR Case No. 06-13610

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 June 29, 2007, 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). Although Applicant requested a decision on the written record, he subsequently moved to convert to a hearing. On April 28, 2008, after a proceeding conducted telephonically, Administrative Judge Mark W. Harvey denied Applicant’s request for a security clearance. Applicant appealed, and in a decision dated October 31, 2008, the Appeal Board remanded the case for a new proceeding that complies with the Directive. After a subsequent hearing, the Administrative Judge denied Applicant’s request for a security clearance. Applicant timely 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 essentially contends that the Judge’s adverse decision should be reversed because the Judge did not give adequate weight to mitigating evidence and other favorable evidence about the origin of his delinquent debts, the basis for his false answer to question 21 of his security clearance application, and his military service. In support of his request, Applicant summarizes the favorable evidence he presented below. Applicant’s argument does not demonstrate that the Judge’s ultimate conclusions are in error.

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*. *See, e.g.*, ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). 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. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

The Board does not review a case *de novo*. After reviewing the record, the Board concludes that the Judge’s ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge is AFFIRMED.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairman, 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