

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

DIGEST: The Judge concluded that Applicant showed a steady pattern of criminal activity since 2001, and he concluded that there has not been a sufficient amount of time to determine whether his rehabilitative efforts will be successful. The Board finds no reason to believe that the Judge did not properly weigh the evidence or that he failed to consider all the evidence of record. Adverse decision affirmed.

CASENO: 14-00667.a1

DATE: 12/16/2014

DATE: December 16, 2014

In Re:)	
)	
-----)	ISCR Case No. 14-00667
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 7, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), Guideline H (Drug Involvement), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant

requested that the case be decided on the written record. On September 11, 2014, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert E. Coacher denied Applicant's request for a security clearance. Applicant 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 security clearance decision.

The Judge made the following findings: Applicant is 34 years old, unmarried, and has two children. Applicant has twelve delinquent debts in the amount of \$46,000. Applicant sold crack cocaine for profit from about June 2005 to December 2005 and used cocaine from June 2005 to November 2010. He was convicted of selling controlled substances and sentenced to three years probation in 2005 or 2006. He used crystal methamphetamine until about February 2006. He was convicted of battery and sentenced to three years probation in 2006. He was convicted of driving on a suspended license in 2008 and placed on probation. The probation was later revoked and then extended three years. He was arrested for trespass and refusing to leave private property in 2008. He was arrested for driving on a suspended license in May 2009 and January 2010. He was arrested and convicted for DUI in 2011. He was arrested for public intoxication in 2011 or 2012. In 2001 he was discharged from the military under other than honorable conditions because of a positive urinalysis test for marijuana. He used marijuana while holding a security clearance.

In June, 2013, Applicant completed a security clearance questionnaire. He answered "no" to a question concerning drug use within the last seven years. He answered "yes" to the question concerning whether he had been charged, convicted, or sentenced regarding a crime within the last seven years. He gave the details for his 2005 conviction for selling drugs, but failed to list any additional crimes. He was also asked whether he had ever been or was currently on probation. He answered "yes" to this question in one place in the application and "no" when he was asked about any other offenses that may have resulted in probation. He was also asked if he was ever charged with an offense involving alcohol or drugs to which he answered "no." These answers were not true.

Applicant indicated that he is working with his sister to get his finances in order. Concerning his past criminal conduct, he acknowledged his past actions, but has now surrounded himself with "positive people" and lives for his kids. He no longer uses drugs or alcohol and he voluntarily attends AA meetings. He did not present any documents supporting these assertions.

The Judge reached the following conclusions: Applicant's debts are recent and remain unresolved. He did not provide sufficient evidence to show that the debts are unlikely to recur. There is no evidence that he has made a good-faith effort to pay the remaining debts. Applicant illegally used marijuana, cocaine, methamphetamine, and sold cocaine for profit on a number of occasions. His period of abstinence is insufficient to demonstrate his intent not to use illegal drugs in the future. He did not present sufficient evidence to establish that he completed a drug treatment program, nor did he present evidence of a favorable diagnosis. Applicant has shown a steady pattern of criminal activity since 2001. There has not been a sufficient amount of time to determine whether his rehabilitative efforts will be successful. His last criminal act is not sufficiently attenuated after considering his behavior in its totality. Falsifying information on a security clearance application

casts doubt on Applicant's trustworthiness, reliability, and good judgment. Applicant failed to mitigate the security concerns arising under Guideline F, Guideline J, Guideline H and Guideline E.

Applicant asserts that he is a changed individual and is moving forward regardless of his past. He states that he is implementing ways to improve his credit standing. He argues that his past efforts to mitigate his prior drug use were not considered by the Judge. He states that his most recent convictions were alcohol related and were dismissed and were removed from his record. Applicant's arguments do not establish error on the part of the Judge.

Applicant makes numerous references on appeal to his circumstances since the close of the record. Applicant's representations constitute new evidence, which the Board cannot consider. Directive ¶ E3.1.29.

There is a rebuttable presumption that the Judge has considered all the record evidence. *See, e.g.,* ISCR Case No. 07-18303 at 2 (App. Bd. Nov. 13, 2008). Applicant's assertion that the Judge did not consider mitigating evidence regarding his history with drugs does not overcome this presumption. The Board finds no reason to believe that the Judge did not properly weigh the evidence or that he failed to consider all the evidence of record. *See, e.g.,* ISCR Case No. 11-06622 at 4 (App. Bd. Jul. 2, 2012). We have considered the totality of Applicant's arguments on appeal and find no error in the Judge's ultimate conclusions regarding mitigation

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). A party'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*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge is AFFIRMED.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board