

KEYWORD: Guideline F; Guideline E

DIGEST: As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable, or vice versa. Adverse decision affirmed.

CASENO: 07-03298.a1

DATE: 07/16/2008

DATE: July 16, 2008

In Re: ----- Applicant for Security Clearance))))))))	ISCR Case No. 07-03298
---	--------------------------------------	------------------------

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, 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). Applicant requested a hearing. On April 7, 2008, after the hearing, Administrative Judge Martin H. Mogul 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 adverse clearance decision under Guideline F is arbitrary, capricious or contrary to law.¹

Applicant contends that the Judge's adverse decision should be reversed because the Judge did not give adequate weight to the mitigating evidence, and the decision is "unfair" because he is a responsible person and did not breach workplace security. Applicant's arguments do not demonstrate that the Judge erred.

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).

In this case, the Judge found that Applicant had a lengthy and serious history of not meeting financial obligations. At the time of the hearing, Applicant still had a significant number of delinquent debts. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing. See, e.g., ISCR Case No. 05-07747 at 2 (App. Bd. Jul. 3, 2007). 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 and whole-person factors. He found in favor of Applicant under Guideline E. However, he reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome the government's other security concerns. The Board does not review a case *de novo*. After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his 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)). An applicant with good or exemplary job performance may engage in conduct that has negative security implications. The Guidelines set forth in the Directive address a variety of examples of off-duty conduct and circumstances which are a security concern to the government and require a whole-person analysis to determine an applicant's security eligibility. A whole-person analysis is by its very nature not confined to the workplace. See,

¹The Judge's favorable finding under Guideline E is not at issue on appeal.

e.g. ISCR Case No. 03-19006 at 6 (App. Bd. Oct. 17, 2005). Therefore, the Judge's ultimate unfavorable security clearance decision under Guideline F is sustainable.

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board