

KEYWORD: Guideline F

DIGEST: The Board may not consider new evidence on appeal. A Judge is presumed to considered all the record evidence. At the time of the hearing Applicant still owed \$56,729 in twelve delinquent debts. Adverse decision affirmed.

CASENO: 07-03879.a1

DATE: 03/14/2008

DATE: March 14, 2008

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In Re:)	
)	
-----)	ISCR Case No. 07-03879
)	
)	
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 July 13, 2007, DOHA issued a statement of reasons (SOR) 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 November 27, 2007, after the hearing, Administrative Judge Erin C. Hogan 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 is arbitrary, capricious or contrary to law.

Applicant argues that the Judge’s adverse decision should be reversed because the Judge did not give sufficient weight to Applicant’s mitigating evidence which showed that his indebtedness had resulted from circumstances beyond his control, that he had acted responsibly under the circumstances and made a good faith effort to repay his overdue creditors, and that there are now clear indications that his financial problems are under control. As part of his argument, Applicant notes that the Judge’s findings could have given a fuller explanation of Applicant’s financial circumstances. Applicant also provides new evidence which indicates that since the hearing the twelve delinquent accounts totaling approximately \$56,729 have now been reduced to four delinquent accounts totaling approximately \$7,300 of consumer debt and \$15,343 of mortgage related debt. Applicant’s arguments do not demonstrate that the Judge erred.

The Board may not consider new evidence on appeal. *See* Directive ¶ E3.1.29. Therefore, the Board may not consider Applicant’s efforts to reduce his outstanding indebtedness after the close of the record. That evidence does not demonstrate error on the part of the Judge. *See, e.g.*, ISCR Case No. 06-00799 at 2 (App. Bd. Apr. 16, 2007).

The Judge is presumed to have considered all the evidence in the record unless she specifically states otherwise. *See, e.g.*, ISCR Case No. 04-08623 at 4 (App. Bd. Jul. 29, 2005). She is not required to cite or discuss every piece of record evidence. *See, e.g.*, ISCR Case No. 04-01961 at 2 (App. Bd. Jul. 12, 2007). After reviewing the Judge’s findings, the Board concludes that they are supported by “such relevant evidence as a reasonable mind might accept as adequate to support such a conclusion in light of all the contrary evidence in the record.” Directive ¶ E3.1.32.1. *See also Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620-21 (1966).

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 owed approximately \$56,729 on

twelve delinquent accounts. 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 conditions and factors. She found in favor of Applicant as to some of the SOR allegations. However, she reasonably explained why the evidence which the 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 the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 2 (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 her 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)). 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: 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