

KEYWORD: Guideline F; Guideline E; Guideline J

DIGEST: The Judge concluded that Applicant’s efforts to address his delinquent debt, while representing a good start, were not sufficient to mitigate the Guideline F security concerns in his case. Adverse decision affirmed.

CASENO: 07-07883.a1

DATE: 03/09/2009

DATE: March 9, 2009

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 07-07883
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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 9, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On January

9, 2009, after the hearing, Administrative Judge Michael H. Leonard 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, and contrary to law. For the following reasons, the Board affirms the Judge's unfavorable decision.¹

Applicant asserts that he is a responsible, trustworthy person, and the fact that he has financial problems does not mean that he would jeopardize his security clearance. Applicant maintains that he is acting responsibly to correct his debt delinquencies and is making payments to retire his debts. These assertions do not establish error on the part of the Judge.

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). 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).

In this case, the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. He concluded that, notwithstanding the partial applicability of two Guideline F Mitigating Factors, the evidence in mitigation was of insufficient strength to overcome the government's security concerns. Specifically, the Judge noted that Applicant's repayment efforts represent a good start, but his record of repayment has been skimpy to date and Applicant has made little progress in light of the overall size of his indebtedness. These conclusions are reasonably supported by the record. The Judge also considered Applicant's service to the country in his whole person analysis.

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 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)). "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 under Guideline F is sustainable.

¹The Judge ruled in Applicant's favor regarding the SOR allegations under Guidelines E and J. Those favorable rulings are not at issue on appeal.

Order

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

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: Michael D. Hipple

Michael D. Hipple
Administrative Judge
Member, Appeal Board