

KEYWORD: Guideline F; Guideline E

DIGEST: Given the limited information that was available to Judge, his finding of deliberate falsification is sustainable. The Judge reasonably explained why the evidence in mitigation was insufficient to overcome the government's security concerns. Adverse decision affirmed.

CASENO: 07-09546.a1

DATE: 06/06/2008

DATE: June 6, 2008

In Re:	)	
	)	
-----	)	ISCR Case No. 07-09546
	)	
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 November 3, 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 that the case be decided on the written record. On March 6, 2008, after considering the record, Administrative Judge Edward W. Loughran 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 Guidelines F and E is sustainable.

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 he asserts shows that he now has an adequate plan for resolving his financial problems. He also argues that there is no danger that he will disclose sensitive information, and that his failure to list five unpaid debts on his Electronic Questionnaire for Investigations Processing (eQIP) was the result of a mistake, not a deliberate falsification.<sup>1</sup> Applicant’s arguments do not establish the Judge erred.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish 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). 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 his Answer to the SOR, Applicant admitted to the falsification of his (eQIP) without explanation. He elected to have his case decided on the written administrative record, and in his respond to the government’s file of relevant material (FORM) offered no explanation for the omissions. As a result, the Judge did not have an opportunity to question him about the omissions and evaluate his credibility in the context of a hearing. Given the limited record that was before him, the Judge’s finding of deliberate falsification is sustainable, and his ultimate unfavorable clearance decision under Guideline E is not arbitrary, capricious or contrary to law. *See* Directive ¶ E3.1.32.1; ISCR Case No. 06-26061 at 2 (App. Bd. Mar. 17, 2008).

With respect to the Guideline F allegations, the Judge made sustainable findings that Applicant had a lengthy and serious history of not meeting financial obligations. At the time the case was submitted for decision, Applicant still had a significant amount of overdue indebtedness that he was trying to clear up, and had only recently been accepted into a credit card assistance program.

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<sup>1</sup>In his appeal brief, Applicant offers new evidence in the form an explanation as to the circumstances surrounding his preparation of his eQIP. The Board may not consider this new evidence on appeal. *See* Directive ¶ E3.1.29.

In light of the foregoing, the Judge could reasonably conclude that: “[i]t is too early in the process to know if Applicant will adhere to the program. There are not yet clear indications that the problem is being resolved or is under control.” Decision at 6.

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. The Judge found in favor of Applicant as to several of the SOR allegations. However, the Judge reasonably explained why the evidence which 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 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)). 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