

KEYWORD: Guideline F; Guideline E

DIGEST: Given the totality of the record evidence the Judge's conclusion that Applicant deliberately falsified his security clearance application is sustainable. Adverse decision affirmed.

CASENO: 07-10749.a1

DATE: 10/10/2008

DATE: October 10, 2008

In Re:	)	
	)	
-----	)	ISCR Case No. 07-10749
	)	
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 March 6, 2008, 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 July 30, 2008, 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 raised the following issues on appeal: whether the Judge erred in concluding Applicant had deliberately falsified his security clearance application; and whether the Judge's adverse clearance decision under Guideline E is arbitrary, capricious or contrary to law.<sup>1</sup>

(1) Applicant argues that he did not deliberately falsify three different questions on his security clearance application by failing to disclose the fact that he had six debts totaling approximately \$38,000 that were currently more than 90 or 180 days delinquent, and that he had been a party to a civil action for damages in excess of \$15,000. In support of that argument, he essentially asserts that the Judge was required to accept, as a matter of law, his explanation that he believed he did not need to disclose that information in response to the questions. Applicant's argument in this regard does not demonstrate that the Judge erred.

A review of the Judge's decision indicates that he considered Applicant's explanation for why he failed to disclose the information in question. The Judge was not bound, as a matter of law, to accept or reject Applicant's explanation. The Judge considered Applicant's explanation in light of the record evidence as a whole, and concluded there was a sufficient basis to find that Applicant's omission was deliberate and intentional. Given the plain language of the questions at issue and the totality of the record evidence, the Judge's conclusion that Applicant had deliberately falsified his security clearance application is sustainable. *See, e.g.,* ISCR Case No. 07-02163 at 2 (App. Bd. Feb. 28, 2008); ISCR Case No. 06-16159 at 2 (App. Bd. Jan. 10, 2008).

(2) Applicant also contends that the Judge's adverse decision should be reversed because the Judge did not give adequate weight to the mitigating evidence, including his outstanding work performance and his favorable community ties. Again, Applicant's argument does 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).

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<sup>1</sup>The Judge's favorable finding under Guideline F is not at issue on appeal.

A review of the decision indicates that the Judge weighed the mitigating evidence offered by Applicant against the recency 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 F. 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 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, 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 E 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: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board