

KEYWORD: Guideline F

DIGEST: There is a rebuttable presumption that the Judge considered all the evidence. There is no requirement that the Judge discuss every piece of evidence. Adverse decision affirmed.

CASENO: 07-18303.a1

DATE: 11/13/2008

DATE: November 13, 2008

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 07-18303
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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 May 8, 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 August 13, 2008, 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.

On appeal, Applicant raises the following issue: whether the Judge's decision is arbitrary, capricious, and contrary to law. Finding no error, we affirm.

The Judge made the following relevant findings of fact: Applicant is 38 years old. Her husband recently retired from the United States Navy after 20 years of service. Applicant and her husband lived overseas from 2003 to 2006 due to her husband's service. While overseas, Applicant completed a Questionnaire for Public Trust Position in which she indicated that she did not have any debts delinquent by 180 days, and later a Questionnaire for National Security Position in which she indicated that she did not have any debts delinquent by 90 or 180 days. A background investigation revealed that Applicant had 11 delinquent accounts, which had been placed for collection in 2004 or earlier. Applicant testified that she did not know she had any delinquent debts until she was interviewed in connection with the investigation. In response to the SOR, Applicant admitted to some of the debts and denied others. In response to interrogatories, Applicant indicated that all her delinquent accounts were closed or resolved because they no longer appear on her credit report, and she submitted a credit report to that effect. Applicant testified that she did not pay any of the debts. She disputed some of the debts, but did not follow up with the credit reporting agencies. All of Applicant's open accounts are current. Applicant's husband testified to her trustworthiness.

In her appeal, Applicant primarily restates portions of the record evidence in an effort to rebut the Judge's conclusions.<sup>1</sup> The appeal brief contains new evidence regarding Applicant's efforts to resolve the debts listed in the SOR. The Board cannot consider this new evidence. *See* Directive ¶ E3.1.29.

Applicant argues that she has mitigated any security concerns that might exist under Guideline F and that the Judge either did not consider or did not give adequate weight to her evidence of mitigation. There is a rebuttable presumption that the Judge considered all the record evidence, unless the Judge specifically states otherwise; and there is no requirement that the Judge mention or discuss every piece of record evidence when reaching a decision. *See, e.g.*, ISCR Case No. 04-08134 at 3 (App. Bd. May 16, 2005). Applicant admitted many of the SOR allegations against her. The burden then shifted to Applicant to extenuate or mitigate the security concerns raised by those allegations. Directive ¶ E3.1.15. The Judge concluded that Applicant did not present evidence sufficient to overcome the security concerns raised.<sup>2</sup> The application of disqualifying and

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<sup>1</sup>The Judge found in Applicant's favor regarding Guideline E. The Judge's conclusions as to Guideline E are not in issue.

<sup>2</sup>The Judge concluded, among other things, that although most of the delinquent accounts are no longer listed on Applicant's recent credit reports, it appears to be the result of the passage of time rather than Applicant's resolution of the debts. Decision at 5.

mitigating conditions and whole-person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. Thus, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security determination. 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*. 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 that 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. 06-23384 at 3 (App. Bd. Nov. 23, 2007).

### **Order**

The Judge's decision 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; James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board