

KEYWORD: Guideline F; Guideline E

DIGEST: After reviewing the record the Board concludes that the Judge's findings are based on substantial evidence or constitute reasonable characterizations or inferences that could be drawn from the record. Security clearance determinations are not limited to consideration of work performance or conduct during duty hours. Adverse decision affirmed

CASENO: 07-18698.a1

DATE: 11/18/2008

DATE: November 18, 2008

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) ) )	ISCR Case No. 07-18698
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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 12, 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 September 5, 2008, after the hearing, Administrative Judge Carol G. Ricciardello 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 Guideline F is arbitrary, capricious or contrary to law.<sup>1</sup>

Applicant contends that the Judge’s adverse decision should be reversed because the Judge did not give sufficient weight to Applicant’s mitigating evidence, which indicated that Applicant’s inability to satisfy his outstanding debts was due to a period of underemployment and the collapse of the housing market. He also contends that the Judge’s findings of fact give a distorted picture of his financial situation. Finally, Applicant notes that he has never compromised classified information. Applicant has not demonstrated the Judge erred.

(1) The Board’s review of a Judge’s findings is limited to determining if they are supported by substantial evidence—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. “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620, (1966).

After reviewing the record, the Board concludes that the Judge’s findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Applicant has not identified any harmful error likely to change the outcome of the case. Considering the record evidence as a whole, the Judge’s material findings of security concern are sustainable.<sup>2</sup> *See, e.g.*, ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007).

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

<sup>2</sup>Applicant argues that he is only making \$6,000 a month, rather than \$12,000 a month as found by the Judge. On that issue, the transcript contains the following exchange. Judge: “You make \$12,000 a month?” Applicant: “Yes.” Judge: “And that is after taxes and other deductions?” Applicant: “Yes.” Transcript at 88. Applicant also argues that the Judge erred in finding that he had the means to satisfy his debts. As to that issue, the transcript contains the following exchange. Applicant: “. . . I can make \$1,000 per month.” Judge: “So now it’s sixteen months?” Applicant: “\$1,000 per month.” Transcript at 37.

(2) The Directive presumes there is a nexus or rational connection between proven conduct under any of the Guidelines and an applicant's security eligibility. *See, e.g.*, ISCR Case No. 02-22325 at 3-4 (App. Bd. Jul. 30, 2004). Security clearance determinations are not limited to consideration of work performance or conduct during duty hours. *See, e.g.*, ISCR Case No. 04-08623 at 5 (App. Bd. Jul. 29, 2005). The federal government need not wait until an applicant actually mishandles or fails safeguard classified information before it can deny or revoke access to such information. *See Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969). The absence of security violations does not bar or preclude an adverse security clearance decision. *See* ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005).

(3) 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 serious history of not meeting financial obligations. At the time the case was submitted for decision, Applicant still had significant outstanding debts, and was still trying to resolve his financial problems.<sup>3</sup> In light of the foregoing, the Judge could reasonably conclude that those 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 seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. She found in favor of Applicant as to several of the SOR allegations. However, she reasonably explained why the mitigating evidence was insufficient to overcome all of the government's security concerns. 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 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 are sustainable.

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<sup>3</sup>Applicant's house was foreclosed on in August 2007, and he owed the mortgage company over \$11,000. He had not made any payments on that debt and stated that he intended to file for bankruptcy to discharge it after he had paid other delinquent debts. Decision at 3.

**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: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board