

KEYWORD: Guideline F; Guideline E

DIGEST: The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decisions. The Judge noted that Applicant had made insufficient progress in light of his total indebtedness. Adverse decision affirmed

CASENO: 08-00967.a1

DATE: 03/19/2009

DATE: March 20, 2009

In Re:)	
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Applicant for Security Clearance)	ISCR Case No. 08-00967

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 August 15, 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 January 21, 2009, 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.

Applicant raises the following issue on appeal: whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable decision.¹

Applicant acknowledges that he has not satisfied his debts. He asserts that he is a responsible, trustworthy person, and the fact that he has financial problems does not mean that he would compromise classified information. Applicant maintains that his indebtedness grew out of situations that were not his responsibility, and 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 on this record. Applicant's brief cites to new evidence which the Board cannot consider. *See*, Directive E3.1.29.

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. She concluded that, notwithstanding the partial applicability of three Guideline F Mitigating Conditions, the evidence in mitigation was of insufficient strength to overcome the government's security concerns. Specifically, the Judge noted that Applicant's recent repayment efforts represent a start, but Applicant has made insufficient progress in light of the totality of his indebtedness. The Judge particularly noted that Applicant has taken no steps to resolve nine of his debts. These conclusions are reasonably supported by the record. The Judge explicitly considered Applicant's periods of unemployment and the health condition of Applicant's wife.

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

¹The Judge ruled in Applicant's favor regarding the SOR allegations under Guidelines E and SOR paragraphs 1.c., 1.d., 1.e., and 1.j. Those favorable rulings are not at issue on appeal.

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)). “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.

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: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board