

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant did not demonstrate timely repayment of delinquent debts. He failed to mitigate the security concerns arising from his false answer to the security clearance application. Adverse decision affirmed.

CASE NO: 08-01392.a1

DATE: 02/24/2011

DATE: February 24, 2011

In Re:)	
)	
-----)	ISCR Case No. 08-01392
)	
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 April 8, 2010, 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 December 7, 2010, after the hearing, Administrative Judge Jennifer I. Goldstein denied Applicant’s request for a security clearance. Applicant 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 is arbitrary, capricious or contrary to law.

Applicant argues that the Judge's adverse decision should be reversed because the Judge: 1) erred in concluding that Applicant's efforts to resolve his indebtedness were insufficient to mitigate the government's security concerns, and 2) failed to accept his explanation as to why his omission of information from his Security Clearance Application (SCA) was not deliberate and intentional. Applicant's arguments do not demonstrate that the Judge's decision is arbitrary, capricious or contrary to law.

On appeal, Applicant submits a credit report which post-dates the Judge's decision by three weeks and was not part of the record evidence. The Board cannot consider this new evidence. *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). In this case, the Judge found that Applicant had a lengthy 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. Although some of his outstanding debts had been paid, his actions had not been timely, and two of the debts had been paid involuntarily through garnishment. Decision at 7. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial 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 length and seriousness of the disqualifying conduct, considered the possible application of relevant conditions and factors. While she found in favor of Applicant as to several of the SOR factual allegations, she reasonably explained why the mitigating evidence was insufficient to overcome the government's security concerns. 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).

With respect to the falsification of Applicant's SCA, the Judge specifically considered Applicant's explanations for why he failed to disclose the information in question. Decision at 2-3, 12. However, the Judge was not bound, as a matter of law, to accept or reject that explanation. Rather, the Judge considered that explanation in light of the record evidence as a whole, including his statement that he had failed to disclose his outstanding debts because he was embarrassed, and concluded there was a sufficient basis to find that Applicant's omissions were deliberate and intentional. On this record, the Judge's finding of deliberate falsification is sustainable. *See* Directive ¶ E3.1.32.1.

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 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 unfavorable security clearance decision 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
Chairperson, 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