

KEYWORD: Guideline E; Guideline H

DIGEST: The Judge found that Applicant had a bankruptcy in 2000 and has several delinquent debts now. Applicant answered no to questions on his security clearance application which asked if he has delinquent debts. Adverse decision affirmed.

CASENO: 08-02589.a1

DATE: 06/05/2009

DATE: June 5, 2009

)	
In Re:)	
-----)	ISCR Case No. 08-02589
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Perry Douglas West, Esq

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 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), Guideline E (Personal Conduct), and Guideline H (Drug Involvement) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 26, 2009, after the hearing, Administrative Judge Erin C. Hogan denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in her application of the pertinent mitigating conditions and whether the Judge’s adverse security clearance decision is arbitrary, capricious, or contrary to law¹. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a 54-year-old employee of a Defense contractor seeking to maintain a security clearance. He has held a clearance since 1995. He has been divorced twice and has three adult children from his prior marriages. In 1999 Applicant filed for Chapter 7 bankruptcy protection and was discharged in bankruptcy in 2000. Applicant has several delinquent debts, for such things as credit cards, bounced checks, etc. The Judge’s findings and the record evidence demonstrate that these debts became delinquent subsequent to Applicant’s discharge in bankruptcy. On his security clearance application, Applicant was asked if he had any debts over 180 days delinquent and if he had debts that were currently 90 days delinquent. Applicant answered “no” to both questions. These answers were not true. At the hearing, it was discovered that Applicant owes federal income taxes for 2004, 2005, and 2006. These debts were not alleged in the SOR.

Regarding Guideline F, Applicant contends that the Judge did not assign sufficient weight to his mitigating evidence, including evidence about (1) the financial consequences of his two prior divorces; (2) the fact that his current wife has handled the family finances and that Applicant was unaware of the financial delinquencies; and (3) that he now turns his paycheck over to his father-in-law, who pays the family bills. Concerning Guideline E, Applicant argues alternatively that either the evidence does not support the Judge’s finding that Applicant engaged in falsifications, or the falsifications were mitigated. Applicant also argues that the Judge should have found that his involvement with illegal drugs under Guideline H was mitigated.

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*. 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,*

¹The Judge’s favorable findings under paragraphs 1(a) and (b) of Guideline F; paragraphs 2(a) and 2(d) of Guideline E; and paragraphs 3(a-d) of Guideline H are not at issue in this appeal.

e.g., ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008).² 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 Judge’s decision that “it is not clearly consistent with national security to grant Applicant eligibility for a security clearance” is sustainable on this record. Decision at 11. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security’”).

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett
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

²The record demonstrates that the Judge considered Applicant’s delinquent federal income taxes on the question of mitigation. Decision at 3-4. The Judge also addressed what she viewed as the inherent unreasonableness of Applicant’s having relied upon his wife to take care of the family’s finances, in light of the fact that the wife “had substance abuse problems.” *Id.* at 7.