

KEYWORD: Guideline F

DIGEST: The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. Applicant here had a lengthy and serious history of not meeting financial obligations. Adverse decision affirmed.

CASENO: 08-03128

DATE: 10/24/2008

DATE: October 24, 2008

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| In Re: |) | |
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| ----- |) | ISCR Case No. 08-03128 |
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| 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 18, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of

the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested the case be decided on the written record. On August 20, 2008, after considering the record (which included submissions by Department Counsel and Applicant), Administrative Judge Robert J. Tuider 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.¹ For the following reasons, the Board affirms the Judge’s unfavorable decision.

Applicant essentially contends that the Judge’s adverse decision should be reversed because the Judge did not give adequate weight to the mitigating evidence and other favorable evidence about her life and her military career. In support of her requests, Applicant summarizes the favorable evidence she presented below and describes her ongoing efforts to resolve her financial problems.² Applicant’s argument does not demonstrate that the Judge erred.

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 lengthy and serious history of not meeting financial obligations. At the time of the close of the record, Applicant still had substantial delinquent debts. 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

¹Applicant makes two assertions regarding the Judge’s findings of fact. She states that the Judge made an erroneous finding regarding her daughter’s age, and the Judge neglected to mention Applicant’s receipt of a bonus award from her employer in March 2008. The error regarding the daughter’s age is of no consequence, as it had no bearing on the outcome of the security clearance decision. The Judge’s failure to mention the bonus award is not error. There is no requirement that the Judge mention every piece of evidence in his security clearance decision and there is also a presumption that the Judge considered the entire record unless there is evidence to the contrary. The Board will not presume that the Judge failed to consider Applicant’s bonus award.

²Some of the efforts described on appeal are in addition to the efforts contained in the record below. The Board cannot consider Applicant’s new evidence on appeal. *See* Directive ¶ E3.1.29.

the disqualifying conduct and considered the possible application of relevant mitigating conditions and whole-person factors. He found in favor of Applicant as to two of the factual allegations listed in the SOR. However, he reasonably explained why the evidence which Applicant had presented in mitigation was insufficient to overcome the government's security concerns. The Board does not review a case *de novo*. After reviewing the record, the Board concludes that the Judge examined the relevant evidence and articulated a satisfactory explanation for his decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfs. 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 is sustainable.

Order

The decision of the Judge 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