

KEYWORD: Guideline F

DIGEST: There is a rebuttable presumption that the Administrative Judge considered all the evidence. The cases cited by Applicant are distinguishable on these facts. Adverse decision affirmed.

CASENO: 08-03845.a1

DATE: 02/24/2009

DATE: February 24, 2009

In Re:	)	
	)	
-----	)	ISCR Case No. 08-03845
	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Alan V. Edmonds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 11, 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 December 4, 2008, after considering the record, Administrative Judge Joan Caton Anthony denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Appeal raises the following issue on appeal: whether the Judge's decision is arbitrary, capricious, or contrary to law.

Specifically, Applicant argues that the Judge should have found that his financial situation has been mitigated by his good-faith attempts to settle his debts. Applicant contends that the Judge did not take into account all of the evidence he provided as to those attempts. Applicant cites prior DOHA decisions which he believes are similar to his, in which a security clearance was granted. Finding no error, we affirm the Judge's unfavorable security clearance decision.

Applicant had debts discharged in bankruptcy in December 2002. Applicant's SOR lists seven other debts. Three of those are state tax liens. Applicant admits the existence of the liens, but disputes the amounts in the SOR. Applicant states that he paid off one debt of \$500, but provided limited documentation.<sup>1</sup> Applicant agrees to pay off a debt of \$43 when he learns the identity of the creditor. He states that he made a payment toward a debt of \$1,809, but has not provided documentation. Applicant denies a debt in the amount of \$14,078, but admits that the debt involves a car for which he arranged a voluntary repossession.

There is a rebuttable presumption that the Judge considered all the record evidence unless the Judge specifically states otherwise. *See, e.g.*, ISCR Case No. 07-18303 at 2 (App. Bd. Nov. 13, 2008). Applicant admitted several of the SOR allegations against him. The burden then shifted to Applicant to extenuate or mitigate the security concerns raised by those allegations. Directive E3.1.15. The Judge concluded that Applicant did not present evidence sufficient to overcome the security concerns raised. The application of disqualifying and mitigating conditions and whole-person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. Thus, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security determination. 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*. 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 that 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. 06-23384 at 3 (App. Bd. Nov. 23, 2007).

Applicant's citation of other Hearing Office decisions he contends are similar to his case does not demonstrate error on the part of the Judge. While decisions by Hearing Office Judges in other

---

<sup>1</sup>Applicant provided a copy of a bank statement showing a payment of \$500 to an unspecified payee. However, the credit report from June 2008 shows the debt as settled. Decision at 3. The Judge found in Applicant's favor on this debt.

cases may be cited as persuasive authority, those cases are not binding legal precedent which a Hearing Office Judge must follow in another situation. Applicant's reliance on other Hearing Office decisions does not demonstrate that the Judge erred in this case. *See, e.g.*, ISCR Case No. 04-04543 at 3 (App. Bd. Sep. 14, 2005). Moreover, the cases Applicant cites are distinguishable from his case, since in those cases the Applicant had made significant progress in improving his/her financial situation. In this case, the Judge concluded that Applicant had not taken sufficient steps toward financial improvement, in spite of having the apparent means to do so. Decision at 6. The Judge's decision is sustainable.

### **Order**

The Judge's decision denying Applicant a security clearance is **AFFIRMED**.

Signed: Jean E. Smallin

Jean E. Smallin  
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