

KEYWORD: Guideline F; Guideline E

DIGEST: The adverse impact which a decision may have on an applicant's employment is not a factor that can be considered in evaluating security clearance eligibility. Adverse decision affirmed.

CASENO: 08-07745.a1

DATE: 03/11/2009

DATE: March 11, 2009

_____)	
In Re:)	
)	
-----)	ISCR Case No. 08-07745
)	
)	
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 August 27, 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 12, 2009, after the hearing, Administrative Judge Noreen A. Lynch denied Applicant's request for a security clearance. Applicant timely 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 under Guideline F is arbitrary, capricious or contrary to law.¹

Applicant asks that the Judge's adverse decision be reversed, arguing that he is doing everything he can to resolve his financial problems and the denial of a clearance will adversely impact his employment situation. He also questions whether the Judge saw the post-hearing submissions he faxed to her. Applicant's arguments do not demonstrate that the Judge's decision is arbitrary, capricious or contrary to law.

The adverse impact of a decision on an Applicant's employment situation is not a factor that can be considered in evaluating his security clearance eligibility. *See, e.g.*, ISCR Case No. 03-21012 at 4 (App. Bd. Aug. 31, 2005).

The Judge's decision indicates that Applicant's post-hearing submission "was timely received and marked as (AE) A." Decision at 2. There is a presumption that the Judge considered all the evidence in the record unless she specifically states otherwise. *See, e.g.*, ISCR Case No. 04-08623 at 4 (App. Bd. Jul. 29, 2005). Applicant has not rebutted that presumption.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. 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 found that Applicant had a lengthy history of not meeting financial obligations. She specifically noted that Applicant had not voluntarily paid any debts listed in the SOR and had admitted that he was going to file for bankruptcy. Decision at 5. 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 and considered the possible application of relevant conditions and factors. She reasonably explained why the mitigating evidence was insufficient to overcome the government's security concerns. 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 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)

¹The Judge found in favor of Applicant as to Guideline E and SOR paragraph 1.h. Those favorable findings are not at issue on appeal.

(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 denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

Signed: Michael D. Hipple

Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board