

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant's appeal brief does not rebut the presumption that the Judge fairly considered all the evidence. Adverse decision affirmed

CASENO: 08-07753.a1

DATE: 02/25/2011

DATE: February 25, 2011

In Re:)
)
)
 -----) ISCR Case No. 08-07753
)
)
 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 September 11, 2009, 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 November 24, 2010, after the hearing, Administrative Judge LeRoy F. Foreman 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 contends that the Judge's adverse decision should be reversed because the Judge mis-weighted the evidence. Specifically, he argues that the Judge's decision focused almost exclusively on the government's adverse evidence and did not give enough consideration to the mitigating evidence presented by Applicant. As a result, Applicant believes that he did not receive a fair decision under the whole-person concept. Applicant has not demonstrated that the Judge's ultimate adverse decision is arbitrary, capricious, or contrary to law.

A review of the decision indicates that the Judge reasonably considered evidence favorable to the Applicant including such things as: his explanations as to the circumstances alleged in the SOR; his educational and employment accomplishments; his favorable performance reviews and pay raises; his honorable service in the U.S. Army; his reputation for having a positive attitude, for being cooperative, for being responsive to customers, and for being an effective manager; his recent engagement of a debt resolution company and his settlement or partial payment of several outstanding debts; and the fact that he has held a clearance since 1987. Decision at 2-4, 9. A Judge is presumed to have considered all the evidence in the record. *See, e.g.*, ISCR Case No. 08-06559 at 3 (App. Bd. Dec. 2, 2010). There is nothing in the Applicant's presentation on appeal or in the decision to rebut the presumption that the Judge fairly considered all of the evidence including evidence favorable to the Applicant.

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).

As to Guideline F, 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. In light of the foregoing, the Judge could reasonably conclude that Applicant "ha[d] not yet established a track record of financial responsibility" and that his 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. He reasonably explained why the mitigating evidence 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 as to the Guideline F allegations the Judge examined the relevant data and articulated a satisfactory explanation for the 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). The Judge's unfavorable security clearance decision under Guideline F is sustainable. Accordingly, the Board need not reach the issues raised by Applicant as to Guideline E. *See, e.g.*, ISCR Case No. 06-20062 at 3 (App. Bd. Jul. 15, 2008).

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