

KEYWORD: Guideline F

DIGEST: Applicant's response to the File of Relevant Material contained documentary evidence that Applicant had settled only one of 18 debts alleged in the Statement of Reasons. Adverse decision affirmed.

CASENO: 08-08713.a1

DATE: 06/08/2009

DATE: June 8, 2009

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| ----- |) | ISCR Case No. 08-08713 |
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| Applicant for Security Clearance |) | |
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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 January 26, 2009, 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 that the case be decided on the written record. On April 30, 2009, after considering the record, Administrative Judge John Grattan Metz, Jr. 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 under Guideline F is arbitrary, capricious or contrary to law.

Applicant contends that the Judge’s adverse decision should be reversed because the Judge erred with respect to several of his findings of fact.¹ For the reasons that follow, the Board affirms the Judge’s decision.

Applicant’s response to the government’s file of relevant material (FORM) only contained documentary evidence establishing that she had settled one of the 18 debts listed in the SOR. There was no other independent evidence to corroborate assertions she had made in her answer to the SOR.² On appeal she submits four documents which indicate that she has met with a credit counselor and has paid off three of her 18 debts. Two of these documents are dated after the close of the record. The Board cannot consider this new evidence on appeal. *See* Directive ¶ E3.1.29.

The Board’s review of a Judge’s findings is limited to determining if they are supported by substantial evidence—such relevant evidence as a reasonable mind might accept as adequate to support such a conclusion in light of all the contrary evidence in the record. Directive ¶ E3.1.32.1. “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620, (1966).

After reviewing the record, the Board concludes that the Judge’s material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Applicant has not identified any harmful error likely to change the outcome of the case. Considering the record evidence as a whole, the Judge’s material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007).

¹Applicant argues that the Judge erred in finding that she had not pursued charges against her ex-husband for opening accounts without her knowledge, that she had not sought credit counseling, and that she had not paid off five of 18 debts listed in the SOR. To the extent that the Judge relied on his finding that Applicant had not pursued criminal charges against the ex-husband, such reliance was misplaced because the Directive has no such requirement.

²The Board has previously noted that it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of individual debts. *See, e.g.*, ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008).

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 serious 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 her financial problems. In light of the foregoing, the Judge could reasonably conclude that those problems were still ongoing. See, e.g., ISCR Case No. 05-07747 at 2 (App. Bd. Jul. 3, 2007). The Judge weighed the limited mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. The Judge found in favor of Applicant as to two of the SOR factual allegations, but 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*. 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 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)). Therefore, the Judge's ultimate unfavorable security clearance decision 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: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board