KEYWORD: Guideline F

DIGEST: Applicant's appeal cites two letters of recommendation lost by his employer but no additional meaningful information. The Judge considered all the exhibits Applicant submitted. Applicant has not provided enough information to justify reopening the record. Adverse decision affirmed.

CASENO: 08-10829.a1

DATE: 03/05/2010

DATE: March 5, 2010

In Re:	)	
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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 June 17, 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 a hearing. On December 23, 2009, after the hearing, Administrative Judge Philip S. Howe denied Applicant's request for a security clearance. Applicant appealed pursuant to 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. Finding no error, we affirm the Judge's decision.

The Judge made the following relevant findings of fact: Applicant has admitted with explanation the debts alleged in the SOR. The SOR debts include ten state tax liens and an Internal Revenue Service (IRS) lien. The state liens total $19,505, and the IRS lien is for $37,898. The liens involve the years 2000 through 2008, when Applicant operated his own business. Applicant filed tax returns for those years, but did not have funds to pay the amounts due. The other two debts in the SOR involve a mortgage and a second mortgage on Applicant's house, which is now in foreclosure. Applicant blames most of his financial difficulties on his former wife's excessive spending and his failure to curtail it. When his wife filed for divorce, Applicant signed a property settlement which assigned him the obligation to pay the mortgage and other debts. Applicant pays $1,100 per month in child support for his daughter, as well as college tuition and other expenses for his son, leaving net income of $600 per month. Applicant is contemplating bankruptcy. Applicant served in the U.S. Army from1980 until 1983 and then in the National Guard until 1988 and held a security clearance at that time without any violations of policy. Applicant now works for a defense contractor and submitted medallions and certificates of appreciation for his support of U.S. military forces, as well as a job evaluation indicating outstanding technical knowledge.

In his appeal, Applicant restates the circumstances surrounding his financial difficulties. To the extent that any of the information was not included in the record below, it cannot be considered, since it is new evidence. Directive ¶ E3.1.29. Likewise, four letters of recommendation and a letter from Applicant's attorney, all dated in January 2010, cannot be considered.

In his decision, the Judge discussed five exhibits which Applicant submitted after the hearing. The Judge indicated that the exhibits showed Applicant's technical expertise and his contribution to military activities. In his appeal, Applicant refers to two letters of recommendation which he says his employer lost. Applicant does not explain the circumstances or the timing of the loss or the significance of the letters, and he does not provide copies of them. It is clear that the Judge considered the exhibits Applicant submitted, and Applicant has not provided enough information to cause the Board to reopen the record.

Applicant attached a letter to his appeal brief that he read at the hearing. When Applicant read the letter aloud during the hearing, it became part of the record. There is a rebuttable

presumption that the Judge considered all the record evidence in the absence of clear evidence to the contrary. *See, e.g.,* ISCR Case No. 08-03845 at 2 (App. Bd. Feb. 24, 2009). In this case, it is clear that the Judge considered the information contained in the letter, since he referred to the information in his decision.

At the hearing, Applicant testified as to the causes of his financial difficulties. That was mitigating evidence for the Judge to consider. As discussed above, there is a rebuttable presumption that the Judge considered it unless there is clear evidence to the contrary.[1] However, 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.*[2] 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. 07-10454 at 2 (App. Bd. Aug. 12, 2008).

Applicant's appeal brief focuses on the importance of his workplace to U.S. national security. Applicant's argument is misplaced because it sheds no light on the concerns in a security clearance adjudication. *Cf.* ISCR Case No. 99-0456 at 3 (App. Bd. Jan. 21, 2000); and ISCR Case No. 98-0370 at 3 (App. Bd. Jan. 28, 1999).

After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his 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 Judge's adverse decision is sustainable on this record. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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[1]Applicant notes that in the Analysis section of the decision the Judge stated that Applicant had done nothing to resolve his personal income tax liabilities. Decision at 5. However, Applicant points out that he used all of a federal income tax refund of $5,800 in 2008 to reduce his debt to the IRS. The Judge stated that fact in his Findings of Fact. Decision at 5. If the Judge's failure to restate it in the Analysis section was error, it was harmless error, since it is unlikely that fact alone would have led to a different result. *See, e.g.,* ISCR Case No. 06-20062 at 2 (App. Bd. Jul. 15, 2008).

[2]Applicant argues that the Judge confused Applicant's ex-wife and his current fiancée. However, Applicant's testimony at pages 44-51 can reasonably be read as saying the same things about his fiancée's role in his finances as the Judge wrote in his challenged Finding of Fact.

Order

The Judge's decision 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