

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant failed to demonstrate that the Judge did not consider, or mis-weighed, all of the record evidence. An ability to argue for a different interpretation of the record evidence is not sufficient to show that the Judge mis-weighed the evidence. Adverse decision affirmed.

CASE NO: 08-11458.a1

DATE: 06/06/2011

DATE: June 6, 2011

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In Re:)	
)	
-----)	ISCR Case No. 08-11458
)	
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 5, 2010 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 March 17, 2011, after the hearing,

Administrative Judge Claude R. Heiny denied Applicant's request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable decision.

The Judge made the following pertinent findings of fact: Applicant has a history of financial problems. He filed for Chapter 13 bankruptcy in 2000. Applicant later requested that the bankruptcy action be dismissed after he obtained a job and could cover his debts. As of 2010, he has an unpaid judgment for rent and has ten collection or charged off accounts which total approximately \$26,000. Applicant asserts that he paid his outstanding debts, but he provided no documentation showing payments. In August 2008, Applicant completed a security clearance application. He answered "no" to a question asking if he had been charged with or convicted of a felony offense, even though he had a July 2000 felony conviction. In his answer to the SOR, Applicant stated he did not know he was charged with a felony and was told that all charges had been dropped and were not on his record. At the hearing, Applicant gave a different reason for his "no" answer. He stated he thought the question was limited to felony arrests and convictions during the previous seven years only.

The Judge reached the following conclusions: Applicant's financial problems are not mitigated because he did not act more aggressively and responsibly to resolve his delinquent debt. His financial problems are not isolated. There is no showing that the delinquent debts have been paid or resolved, thus the debts are a continuing course of conduct. Applicant receives partial mitigation since his problems were contributed to by an earlier unemployment and having to relocate to new states in search of work. However, he has been employed at his current job since November 2009 and the debts remain unpaid. Applicant falsified his response to his security clearance application and that falsification is not mitigated. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate Government interests.

Applicant argues that the Judge did not look at or take into account all of the documents that he presented in the case. He states that there were no charged accounts on the date of his hearing, and that he had provided a copy of his current credit report that showed his debts had been repaid and all other debts were up to date. Applicant also asserts that his answer to the question on the security clearance application was the result of a mistake. Applicant's arguments do not establish error on the part of the Judge.

Applicant relies heavily on an August 2010 credit report that he provided the Judge and that was admitted into evidence. Applicant states that the credit report establishes his satisfactory payment of his outstanding debts. The Judge specifically mentions the report in his decision, but notes that the mere fact that the report does not contain data on Applicant's delinquent accounts (which had been established by two previous credit reports) does not provide proof that the debts were paid. The Judge requested that Applicant provide additional documentary evidence to demonstrate that the debts had been satisfied, but no additional evidence was forthcoming. The August 2010 credit report does not appear to reference the debts listed in the SOR. Concerning the debts that it does list, with one exception the report indicates that there were no delinquencies or late

payments on any of the accounts for the last seven years. In light of the other evidence of debt delinquency in the record, the August 2010 credit report appears incomplete at best. Given these facts, the Judge was not required to accept the report as definitive evidence of Applicant's satisfaction of his numerous delinquent debts.

Regarding Guideline E, Applicant's explanations as to why he answered the question on the security clearance application the way he did was evidence that the Judge was required to consider. However, the Judge was not required to find Applicant's explanation credible, particularly in light of the fact that Applicant provided differing explanations for his "no" answer.

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*. 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 weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. The Judge provided reasonable explanations for his ultimate conclusion that Applicant had not mitigated the Government's case.

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 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 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). 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
Chairperson, Appeal Board

Signed: Jeffrey D. Billett _____

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: William S. Fields _____

William S. Fields
Administrative Judge
Member, Appeal Board