

KEYWORD: Guideline F

DIGEST: The government is not estopped from issuing an adverse decision merely because there was a prior favorable adjudication. Adverse decision affirmed.

CASENO: 09-00206.a1

DATE: 05/10/2010

DATE: May 10, 2010

In Re:)	
)	
----)	ISCR Case No. 09-00206
)	
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 18, 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 February 22, 2010, after the hearing, Administrative Judge Joan Caton Anthony denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge ignored or mis-weighted record evidence; whether the Judge failed properly to apply the pertinent mitigating conditions; and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant holds a B.S. in marketing and attended law school for one year. She served as a commissioned officer in the U.S. military from 1998 to 2003 and was a reservist for two more years thereafter. She experienced unemployment from March 2008 until July 2008, but she now holds a job as a program control and operations analyst for a government contractor.

Applicant has three delinquent debts, two of which have been reduced to judgments. She also owes a third debt due to her failure to pay the mortgage on a townhouse. Although Applicant has entered into a debt repayment program, the Judge concluded that she had failed to mitigate the security concerns in her case. "Applicant's financial problems began when she was a mature adult. She is responsible for approximately \$70,000 in delinquent debt. While she recently established payment plans to satisfy two judgments, she has failed to demonstrate that she has developed a long-term plan to satisfy her creditors and understands how to avoid excessive debt in the future." Decision at 8.

Applicant contends that the Judge ignored record evidence and/or that she mis-weighted the record evidence. However, a Judge is presumed to have considered all the evidence in the record. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009); ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008). A Judge is not required to mention or discuss every piece of record evidence. *See, e.g.*, ISCR Case No. 08-01616 at 2 (App. Bd. Jul. 7, 2009); ISCR Case No. 07-17673 at 2 (App. Bd. Apr. 2, 2009). Applicant's brief on appeal is not sufficient to rebut the presumption that the Judge considered all of the evidence. Neither is it sufficient to demonstrate that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-21819 at 2 (App. Bd. Aug. 13, 2009); ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Applicant points to another decision by the Hearing Office, which, she argues, supports her request for a favorable determination. The Board gives due consideration to this case. However, each case "must be decided upon its own merits." Directive ¶ E2.2.3. Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. *See* ISCR Case No. 06-24121 at 2 (App. Bd. Feb. 5, 2008).

Applicant states that she was granted a Top Secret clearance in the Navy, despite some financial problems which she had experienced in college. As a consequence, she contends that the concerns implicit in her financial difficulties have previously been addressed in her favor and should likewise be mitigated in her current case. However, prior decisions to grant or retain a clearance do not undermine the legal sufficiency of a Judge's subsequent adverse decision. "The government is

not estopped from making an adverse clearance decision when there were prior favorable adjudications.” ISCR Case No. 07-17383 at 2 (App. Bd. Feb. 12, 2009), *quoting* ISCR Case No. 03-04927 at 5 (App. Bd. Mar. 4, 2005).¹ After reviewing the record, we conclude 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,’” both as to the mitigating conditions and the whole-person factors. *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. “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).

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge

¹Applicant’s contention that the Judge ignored record evidence arguably is a challenge to the sufficiency of the Judge’s findings of fact. We have examined the Judge’s findings in accordance with the record. The Judge’s material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. *See, e.g.*, ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007). Applicant also states that she might have presented a more compelling case had she been represented by counsel. Prior to the hearing, Applicant was advised of her right to obtain counsel, along with the other rights afforded by the Directive. At the beginning of the hearing, the Judge reminded her of her right to representation. Tr. at 8. Applicant presented numerous pieces of documentary evidence and called several witnesses in her own behalf. There is no reason to conclude that Applicant was denied due process. *See* ISCR Case No. 08-03110 at 2 (App. Bd. Jan. 27, 2009).

Member, Appeal Board