

KEYWORD: Guideline F

DIGEST: A party's ability to argue for a different interpretation of the evidence is not sufficient to demonstrate error by the Judge. Adverse decision affirmed.

CASENO: 09-01387.a1

DATE: 04/13/2010

DATE: April 13, 2010

In Re:)	
)	
-----)	ISCR Case No. 09-01387
)	
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 July 31, 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 3, 2010, after the hearing, Administrative Judge Martin H. Mogul denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's decision is arbitrary, capricious, or contrary to law. Specifically, Applicant argues that the security concerns raised by his financial situation should be completely mitigated. Finding no error, we affirm the Judge's decision.

The Judge made the following relevant findings of fact: Applicant is an aerospace engineer and is married with two children. In his response to the SOR allegations, Applicant admitted five of the seven alleged delinquent debts, and during the hearing admitted the other two. Applicant provided testimony regarding the origin of his financial difficulties. Applicant's current delinquent debts exceed \$300,000 in total. Applicant served three years in the U.S. Navy and received an honorable discharge. He had debt discharged in a Chapter 7 bankruptcy in 2000 after his parents were killed in an accident and his first wife left him. Applicant also provided positive character letters attesting to his good character and patriotism. In his decision, the Judge focused on Applicant's failure to resolve any of his delinquent debt.

In his appeal brief, Applicant states that he did not hire an attorney to represent him at the hearing because of the expense involved. Applicant indicates that he wishes to restate his case, because he did not fully understand the Directive, and therefore the answers he provided at the hearing were not as complete as they should have been. Applicant's appeal brief also contains evidence of steps he has taken since the hearing to improve his financial situation. At the hearing, Applicant testified that he was a college graduate; he also stated that he had received a copy of the Directive and had read and understood it. Tr. at 5. The Judge found that Applicant was able to represent himself. *Id.* During the hearing, Applicant never indicated that he did not understand the Directive or the proceedings. Moreover, the Judge kept the record open after the hearing, and Applicant submitted further evidence. Applicant had a full opportunity to present his case. To the extent Applicant seeks relief from the consequences of representing himself, his claim lacks merit. *See, e.g.*, ISCR Case No. 03-04779 at 3 (App. Bd. Jul. 20, 2005).

On appeal, the Board does not review a case *de novo*. Rather, the Board addresses the material issues raised by the parties to determine whether there is factual or legal error. There is no presumption of error below, and the appealing party must raise claims of error with specificity and identify how the Judge committed factual or legal error. Directive ¶ E3.1.32. *See also* ISCR Case No. 03-10004 at 2 (App. Bd. Jan. 27, 2006). Apart from his argument regarding mitigation, which will be addressed below, Applicant has not alleged error on the part of the Judge. The Board cannot consider the information Applicant submitted with his appeal concerning steps he has taken since the hearing to improve his financial situation, since it constitutes new evidence. Directive ¶ E3.1.29.

Applicant argues that the security concerns raised by his financial situation should be completely mitigated. The application of disqualifying and mitigating conditions and whole-person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. Thus, the presence of some mitigating evidence does not alone compel the Judge to make a

favorable security clearance determination. 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*.¹ An applicant'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 that 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. 06-23384 at 3 (App. Bd. Nov. 23, 2007).

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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

¹Although the Judge did not discuss the role of the economic downturn in Applicant's situation, given the totality of facts and circumstances (including the previous bankruptcy, the size of the delinquent debt, and the lack of a track record of debt repayment), we cannot conclude that the Judge's omission was harmful.