

KEYWORD: Guideline F

DIGEST: After Applicant admitted the SOR allegations, the burden shifted to him to mitigate the security concerns raised. In this case the Judge noted that Applicant's repayment was made through attachment of his retired pay. Adverse decision affirmed.

CASENO: 09-02732.a1

DATE: 03/18/2011

DATE: March 18, 2011

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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**

Darin M. Groteboer, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 29, 2009, 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 December 30, 2010, after the hearing, Administrative Judge Wilford H. Ross denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

On appeal, Applicant raises the following issues: whether the Judge erred by failing to apply the pertinent mitigating conditions; and whether the Judge’s decision is arbitrary, capricious, or contrary to law. Consistent with the following discussion, we affirm the Judge’s adverse security clearance decision.

The Judge made the following relevant factual findings: Applicant is a retired member of the United States Navy. He served honorably and received several awards and decorations. The SOR alleges 33 debts totaling approximately \$65,423. Applicant has admitted them, and the government has presented evidence to substantiate them. Some of the debts have been due and owing since 2003. Applicant contends that his financial difficulties were caused by a period of unemployment in 2003 and 2004 following his retirement from the Navy. Several of the debts have been paid, and Applicant estimates that he will resolve his financial situation in one or two years. Applicant admits that in 2003 and 2004 he bounced approximately 100 checks at a military exchange for a total of \$3,861.94. Decision at 4. Each time Applicant wrote a check to the exchange, he was aware that he did not have sufficient money in his account to cover the check. The government has collected the money owed to the exchange by attaching funds from Applicant’s retired pay. While Applicant denied that he had been barred from a military installation because of the bounced checks, he remembered an incident when his military identification card was confiscated and he was escorted off base.

Applicant argues that the Judge failed to apply the pertinent mitigating conditions. There is a rebuttable presumption that the Judge considered all the record evidence unless the Judge specifically states otherwise. *See, e.g.*, ISCR Case No. 07-18303 at 2 (App. Bd. Nov. 13, 2008). Applicant admitted the SOR allegations against him. The burden then shifted to Applicant to extenuate or mitigate the security concerns raised by those allegations. Directive E3.1.15. The Judge concluded that Applicant did not present evidence sufficient to overcome all of the security concerns raised.<sup>1</sup> While Applicant stated that he planned to resolve his financial situation in one or two years, the Judge concluded that Applicant had failed to demonstrate consistent forward movement. Decision at 7. Board decisions have stated that a mere statement of intent to pay or resolve debts in the future, as opposed to a track record of financial reform, is insufficient evidence to conclude that an applicant has acted responsively toward his debts. *See, e.g.*, ISCR Case No. 09-02926 at 2 (May 11, 2010). In that regard, the Judge specifically noted that Applicant’s repayment of a substantial number of the bounced checks was made through attachment of his retired pay rather than voluntarily. Decision at 7. Moreover, the application of disqualifying and mitigating

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<sup>1</sup>The Judge made favorable formal findings for Applicant on most of the SOR allegations under Guideline F.

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*. 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).

In support of his appeal, Applicant points to decisions by the Hearing Office, which he argues support his request for a favorable determination. The Board gives due consideration to these cases. However, each case must be decided upon its own merits. Directive, Enclosure 2 ¶ 2(b). Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. *See, e.g.*, ISCR Case No. 06-24121 at 2 (App. Bd. Feb. 5, 2008).

The Board does not review a case *de novo*. After reviewing the record as a whole, 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). Accordingly, the Judge's ultimate unfavorable security clearance decision is sustainable.

### **Order**

The Judge's decision denying Applicant a security clearance is AFFIRMED.

Signed: Michael D. Hipple  
Michael D. Hipple  
Administrative Judge  
Member, 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