

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant's interpretation is not corroborated by the record evidence and does not establish error by the Judge. Adverse decision affirmed.

CASENO: 09-03785.a1

DATE: 01/31/2011

DATE: January 31, 2011

In Re:)	
)	
-----)	ISCR Case No. 09-03785
)	
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 January 15, 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 November 23, 2010, after the hearing, Administrative Judge John Grattan Metz, Jr. 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 findings of fact: Applicant’s financial problems began in 1995. At that time he was self-employed and he did not make estimated quarterly tax payments to the IRS. When he filed his 1995 federal tax return, he owed \$25,000 that he was unable to pay. Applicant did not try to arrange a repayment plan because he believed his income inadequate to satisfy the IRS. In February 1998, the IRS assessed Applicant \$37,426 for unpaid taxes, penalties and interest and filed a tax lien against him for that amount in August 2002. The lien remains unresolved on Applicant’s credit reports. Applicant also owes the IRS for tax year 2003. The balance owed was \$9,814.38 in May 2008 and has been reduced to \$8,013.95 through application by the IRS of overpayments made by Applicant on his 2008 taxes. Applicant has no other plan for paying the IRS other than allowing the IRS to continue to seize future overpayments. Applicant’s other three debts total less than \$1,000. However, he has provided no documentation of his efforts to dispute the debts or confirm their payment. Applicant failed to disclose the 2002 IRS lien on a January 2009 security clearance application. He also answered “no” to questions requiring him to disclose debts currently 90, or ever 180, days past due. Applicant’s claim of innocent mistake is not credible. When he sat down to complete the clearance application, he knew he had a tax lien against him and he knew he had past due taxes for 2003. Further, he knew in a broad sense that the government was interested in his financial condition, and disclosed no information that would put the government on notice of his financial problems. In January 2003, Applicant was charged with a domestic violence offense. Although Applicant denies the charge, the disposition of the offense placed him on 12 months supervised probation and required completion of an anger-management program. Applicant would not acknowledge committing the crime after the program requested that he do so, and he was told not to return to the program. Applicant considered this a negation of the requirement to attend the program, but the program reported his dismissal as a violation of his probation. Applicant moved to another state and failed to report to his probation officer. In February 2004, a warrant for his arrest was issued. When Applicant discovered the warrant, he attempted to have it recalled and his probation dismissed. His motion was denied in March 2006 and the warrant remains outstanding.

The Judge concluded as follows: The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. His financial difficulties are both recent and multiple. He produced no evidence of circumstances beyond his control, and he has not acted responsibly in addressing his debts. He has received no credit or financial counseling, nor has he demonstrated that his financial problems are under control, or that he has a plan to bring them under control. He has not made a good-faith effort to satisfy his debts. The

government established a case for disqualification under Guideline E and Applicant did not mitigate the security concerns. In addition to his falsification of his clearance application, Applicant's failure to resolve an outstanding warrant in another state demonstrates poor judgment and is inconsistent with access to classified information. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate government interests.

Applicant argues that the Judge misconstrued portions of the record evidence and reached erroneous conclusions. In essence, Applicant states that credit reports in evidence are in error, some detailed findings of the Judge regarding his finances are in error, he was truthful and honest to the best of his ability when answering the government's questions, there are no warrants outstanding against him, he is a reliable and trustworthy individual, and he has mitigated the government's case. Applicant's interpretation of the record is not corroborated by the record evidence. Absent such corroboration, Applicant's assertions do not establish error on the part of the Judge.

Applicant's brief contains sections of narrative that detail the facts and circumstances surrounding his financial problems and personal conduct. Some of these representations were not a part of the record below. The Board cannot consider new evidence. Directive ¶ E3.1.29.

Applicant cites evidence he maintains supports a granting of his security clearance. 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*. See, e.g., ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). 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 properly considered the whole pattern of Applicant's handling of his finances and his personal conduct, which included an instance of falsification, and concluded that Applicant had not mitigated the government's concerns. The Judge's findings of fact and his conclusions are reasonably supported by the record evidence.

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