

KEYWORD: Guideline F

DIGEST: After Applicant admitted many of the allegations the burden was on him to extenuate or mitigate the security concerns. Adverse decision affirmed.

CASENO: 09-04354.al

DATE: 10/29/2010

DATE: October 29, 2010

APPEAL BOARD DECISION

APPEARANCES

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nan, Esq., Chief Depa

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 23, 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 July 20, 2010, after the hearing, Administrative Judge Elizabeth M. Matchinski 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 contends that the Judge should have found his financial situation to be mitigated. Consistent with the following discussion, we affirm the Judge's decision.

The Judge made the following relevant factual findings: Applicant has a long-term fiancee with whom he shares responsibility for household expenses. Applicant has a son whom he supports by sending him \$150 to \$200 per week. Incident to refinancing the property, Applicant became legally responsible for the mortgage debt on his fiancee's house, although she still considered the payments to be her responsibility since she considers that house to be her primary residence. In September 2004, Applicant and his fiancee jointly purchased his parents' home. Applicant considers that property to be his primary residence. The mortgage payments on the two properties totaled about \$3,500 per month. Applicant experienced financial difficulties when he was unemployed for much of the time between January 2005 and July 2006. Applicant incurred credit card debt which ultimately became delinquent. While he was unemployed, Applicant stopped making payments on an existing student loan and took out an additional student loan of \$25,000 for a master's program which he did not complete. After Applicant began working again, he continued to experience financial difficulties due to the cost of maintaining two homes, including extensive home repairs, plus significant car repairs. The Judge found that Applicant and his fiancee also owe between \$7,000 and \$8,000 in delinquent real estate taxes on his residence. Applicant has demonstrated a history of late payments. While Applicant has attempted to settle some his delinquencies, he has continued to disregard the student loan dating from 2005 and the delinquent real estate taxes.

Applicant contends that the Judge's decision is arbitrary, capricious, or contrary to law. He maintains that he has mitigated his financial situation and that the Judge did not give adequate weight to his evidence of mitigation. There is a rebuttable presumption that the Judge considered all the record evidence, unless the Judge specifically states otherwise; and there is no requirement that the Judge mention or discuss every piece of record evidence when reaching a decision. *See, e.g.*, ISCR Case No. 04-08134 at 3 (App. Bd. May 16, 2005). Applicant admitted the existence of many of the SOR allegations against him, although he disputed the details of some of them. 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 the security concerns raised. In her decision, the Judge specifically referred to Applicant's testimony of mitigating circumstances, and she found in Applicant's favor as to most of the debts alleged in the SOR. However, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable, 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. 08-01105 at 2 (App. Bd. Dec. 15, 2008).

A review of the record indicates that the Judge weighed the mitigating evidence offered by Applicant against his financial history and considered the possible application of relevant mitigating conditions and factors and the whole-person concept. Decision at 9-13. The Judge reasonably explained why the evidence Applicant had presented in mitigation was insufficient to overcome the government's security concerns. *Id.* 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). The Judge examined the relevant data and articulated a satisfactory explanation for her decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines 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.'" *Dep't of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Accordingly, the Judge's adverse decision is sustainable.

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Michael D. Hipple

Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board