

KEYWORD: Guideline F; Guideline E

DIGEST: 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 that the weighed the evidence in arbitrary or capricious manner. Adverse decision affirmed.

CASENO: 09-06540.a1

DATE: 11/19/2010

DATE: November 19, 2010

In Re:)	
)	
-----)	ISCR Case No. 09-06540
)	
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 April 1, 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 August 31, 2010, after the hearing, Administrative Judge Arthur E. Marshall, Jr., 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 denying her a security clearance is arbitrary, capricious, or contrary to law. Specifically, Applicant contends that the Judge did not consider all the information she provided and did not give adequate weight to her evidence of mitigation. Consistent with the discussion below, we affirm the Judge’s decision.

The Judge made the following relevant findings of fact: Applicant married in 2001, at about the same time that her parents began to experience health problems. Applicant began giving them large amounts of cash. In 2005, Applicant and her husband bought a house; soon thereafter, the value of the house declined, while the mortgage payments adjusted significantly upward. Faced with the higher mortgage payments, Applicant experienced difficulties in paying other bills. The SOR listed nine unpaid or delinquent judgments or other obligations, including the first and second mortgages on her home. Applicant admitted seven of the debts. Applicant testified that the first mortgage had been delinquent, but she provided documentation that it was current as of the time of the hearing. Applicant stated that she had been in contact with most of the other creditors and had paid some of the debts, but provided no documentation in that regard.

Applicant failed to list her unsatisfied judgments and unpaid debts on her security clearance application. Applicant testified that she had completed a similar application before, but was unfamiliar with the electronic format. Applicant stated that she completed the application hurriedly and did not give proper attention to the financial questions, assuming that subject would be dealt with during the investigatory process.

Applicant argues that the Judge’s decision is arbitrary, capricious, or contrary to law. Applicant maintains that she has mitigated any security concerns that might exist under Guideline F and that the Judge either did not consider or did not give adequate weight to her evidence of mitigation.¹ 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 most of the Guideline F allegations against her. 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. The application of disqualifying and mitigating conditions and whole-person factors does not turn simply on a finding

¹The Judge found in Applicant’s favor as to the SOR allegations under Guideline E. The Judge’s conclusions as to Guideline E are not in issue. The Judge also found in Applicant’s favor as to one of the debts under Guideline F.

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*. 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 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. 07-18303 at 2-3 (App. Bd. Nov. 13, 2008).

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

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