

KEYWORD: Guideline F

DIGEST: The judge was not bound to accept Applicant's explanation. Rather he considered it in light of the record as a whole.. The Judge's finding of deliberate falsification is sustainable. Adverse decision affirmed.

CASENO: 09-06986.

DATE: 01/31/2011

DATE: January 31, 2011

In Re:)
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)
 -----) ISCR Case No. 09-06986
)
)
 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 19, 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 15, 2010, after the hearing, Administrative Judge Edward W. Loughran denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse clearance decision is arbitrary, capricious or contrary to law.

Applicant argues that the Judge’s adverse decision should be reversed because the Judge failed to accept his explanation as to why his omission of information from his Security Clearance Application (SCA) was not deliberate and intentional. Applicant also argues that the Judge failed to consider the fact that Applicant had served 25 years in the Navy, retiring at the rank of Senior Chief Petty Officer (E-8), under the whole-person concept.¹ Applicant’s arguments do not demonstrate that the Judge’s decision is arbitrary, capricious or contrary to law.

In reaching his decision, the Judge specifically considered “Applicant’s honorable service to this country in the U.S. military” as part of his analysis under the whole-person concept. Decision at 12. 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 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).

With respect to the falsification of Applicant’s SCA, the Judge specifically considered Applicant’s explanation for why he failed to disclose the information in question. Decision at 7, 12. However, the Judge was not bound, as a matter of law, to accept or reject that explanation. Rather, the Judge considered that explanation in light of the record evidence as a whole, including Applicant’s experience with the security clearance process and the fact that he had given inconsistent information about his finances throughout that process, and concluded there was a sufficient basis to find that Applicant’s omissions were deliberate and intentional. On this record, the Judge’s finding of deliberate falsification is sustainable. See Directive ¶ E3.1.32.1.

The Board does not review a case *de novo*. 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*

¹The Judge’s favorable findings under Guideline F and as to SOR paragraphs 2.a-2.d and 2.f are not at issue on appeal.

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 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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

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