KEYWORD: Guideline F

DIGEST: As of the close of the record, Applicant had not filed for bankruptcy protection. Any discharge of financial obligations resulting from this procedure would come to fruition well into the future. Promises to pay or otherwise resolve delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner or otherwise acting in a financially responsible manner. Nevertheless, the Judge's analysis appears to contravene this requirement, in that she founded it, in large measure, upon the assumption that Applicant would file for bankruptcy after the close of the record, stating that should he not do so his access to classified information would be in immediate jeopardy. The speculative nature of this analysis underscores the paucity of actual, concrete evidence of debt resolution or of a track record of responsible action. Insofar as Applicant bore the burden of persuasion, this paucity is a reason to conclude that he had failed to meet that burden, and it should have been addressed forthrightly. Favorable decision reversed.

CASENO: 17-04110.a1

DATE: 09/26/2019

DATE: September 26, 2019

In Re:	)	
	)	
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	)	
	)	
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
Andrea M. Corrales, Esq., Department Counsel

FOR APPLICANT
Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 13, 2018, DoD 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 decision on the written record. On June 21, 2019, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson granted Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issue on appeal: whether the Judge's favorable decision ran contrary to the weight of the record evidence and, accordingly, was arbitrary, capricious, or contrary to law. Consistent with the following, we reverse.

The Judge's Findings of Fact

Applicant's SOR alleges nine delinquent debts, for such things as consumer purchases, child support payments, and Federal tax obligations. The total amount of debt alleged in the SOR is about $57,500. Applicant attributed his financial problems to inability to pay debts incurred during a marriage and to a divorce. His child support payments were increased significantly, which made it difficult for him to pay his debts. Applicant stated that his child support delinquency had been mensurably reduced through court-ordered wage garnishment and that his delinquent Federal tax debt had been resolved through interception of his state tax refund. He intends to file for bankruptcy in order to resolve his remaining financial problems.

Applicant's supervisors characterize him as reliable and trustworthy. They state that he has an excellent work record and that he exercises sound judgment.

The Judge's Analysis

The Judge concluded that Applicant has shown a good-faith effort to resolve his delinquent debts. "He is or has filed for Chapter 7 Bankruptcy and the debts listed in the SOR will or have been discharged." Decision at 6. She stated that Applicant had not incurred new debt, thereby demonstrating that his financial problems are being resolved. "In the event that Applicant does not follow through with his plan to file for Chapter 7 Bankruptcy and to have each of the debts listed in the SOR discharged that have not been paid, his security clearance will be in immediate jeopardy." *Id*.

Discussion

There is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied,* 499 U.S. 905 (1991). The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate admitted or proven facts. The applicant has the burden of persuasion as to obtaining a favorable decision. Directive ¶ E3.1.15. The standard applicable in security clearance decisions "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). "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

In deciding whether the Judge's rulings or conclusions are erroneous, we will review the decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See* ISCR Case No. 14-02563 at 3-4 (App. Bd. Aug. 28, 2015).

Department Counsel argues that the Decision fails to address significant aspects of the record. She cites to such things as the timing of Applicant's efforts at debt resolution, the involuntariness of his child support and Federal tax payments, and the speculative nature of the Judge's analysis, which, she contends, undercut the Judge's favorable results. We find Department Counsel's argument to be persuasive.

The concern under Guideline F is not simply that an applicant might be tempted to compromise classified information in order to pay his or her debts. A Judge should also consider the extent to which an applicant's financial problems cast doubt upon his or her judgment, self-control, and other characteristics essential to protecting national security information. *See, e.g.,* ISCR Case No. 16-04112 at 3-4 (App. Bd. May 28, 2019). This obligation is rooted in the language of the Directive, which states that failure to meet financial obligations may indicate unwillingness to abide by rules and regulations, thereby raising questions about an applicant's ability to protect classified information. Directive, Encl. 2, App. A ¶ 18; *see* ISCR Case No. 15-01737 at 3 (App. Bd. Feb. 14, 2017).

When an applicant's record contains evidence that raises security concerns, such as significant, longstanding delinquent debts, the applicant bears the burden of persuasion that he or she should receive a favorable adjudication, under the standard set forth in *Egan, supra*. In the case before us, Applicant's debts raise concerns, as the Judge found. However, those aspects of the case to which Department Counsel draws our attention detract from the Judge's mitigation analysis. For example, the timing of ameliorative action is a factor which should be brought to bear in evaluating an applicant's case for mitigation. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and

willingness to follow rules and regulations when his or her personal interests are not threatened. *See, e.g.*, ISCR Case No. 17-01256 at 5 (App. Bd. Aug. 3, 2018).

As Department Counsel notes, Applicant's financial problems go as far back as 2012. However, he did not engage the services of a lawyer for the purpose of filing for bankruptcy protection until three months after receipt of the SOR and after he had received the File of Relevant Material (FORM). As Department Counsel argues,

> Applicant stated on two occasions–first in his March 2017 security clearance application and again in his September 2018 Answer to the SOR–that he planned to file bankruptcy to discharge [his] debts. However, he did not hire a bankruptcy attorney until November 9, 2018, *i.e.*, after he received the Government's October 30, 2018 FORM. As such, it is clear that Applicant did not take any active measures towards resolving his delinquencies even after the SOR placed him on notice. Appeal Brief at 8.

Accordingly, the timing of Applicant's hiring of an attorney raises questions about his willingness to follow rules or regulations when his interests are not at stake, a matter that the Judge failed to address in her analysis. This failure impairs her overall conclusions.

Moreover, as of the close of the record, Applicant had not filed for bankruptcy protection. Any discharge of financial obligations resulting from this procedure would come to fruition well into the future. Promises to pay or otherwise resolve delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner or otherwise acting in a financially responsible manner. *See, e.g.*, ISCR Case No. 14-04565 at 2 (App. Bd. Sep. 18, 2015). Nevertheless, the Judge's analysis appears to contravene this requirement, in that she founded it, in large measure, upon the assumption that Applicant would file for bankruptcy *after the close of the record*, stating that should he not do so his access to classified information would be in immediate jeopardy. The speculative nature of this analysis underscores the paucity of actual, concrete evidence of debt resolution or of a track record of responsible action. Insofar as Applicant bore the burden of persuasion, this paucity is a reason to conclude that he had failed to meet that burden, and it should have been addressed forthrightly.

We also find persuasive Department Counsel's argument that the circumstances by which the two debts that have been, or are being, resolved undercut the mitigating effect that the Judge apparently assigned to them. For example, Applicant's Federal tax delinquency was resolved not by Applicant's own considered action but, rather, by interception of a state tax refund. In addition, Applicant's significant child-support arrearage has been reduced through wage garnishment. Court-ordered or otherwise involuntary means of debt resolution, such as garnishment, are entitled to less weight than means initiated and carried through by the debtor himself. *See, e.g.*, ISCR Case No. 14-05803 at 3 (App. Bd. Jul. 7, 2016).

Indeed, reliance upon garnishment, refund interception, or bankruptcy do not equate to good-faith efforts by Applicant to resolve his financial problems, as the Judge concluded. The Directive

does not define the term "good faith." However, we have stated that the concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence honesty, and adherence to duty or obligation." *See, e.g.*, ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001). Accordingly, an applicant must do more than show that he or she relied on a legally available options such as garnishment and bankruptcy in order to receive the full benefit of Mitigating Condition 20(d). ("[T]he individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts[.]") *See, e.g.,* ISCR Case No.12-01664 at 3 (App. Bd. Jan. 17, 2014).

In summary, Applicant has had a significant amount of delinquent debt for a number of years, debts which he only began seriously to address after receipt of the SOR and the FORM. Much of that debt he proposes to resolve through bankruptcy, although as of the close of the record he had not filed, much less received discharge. In addition, those debts that he has resolved were addressed through involuntary means such as wage garnishment. Applicant's circumstances raise serious concerns about his judgment and reliability, concerns which cannot be successfully mitigated by the relative paucity of favorable evidence contained in the file. The Judge's analysis fails to address important aspects of the case and runs contrary to the weight of the record evidence. Accordingly, the Judge's favorable decision is not sustainable.

Order

The Decision is **REVERSED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board