

KEYWORD: Guideline E; Guideline F

DIGEST: The Appeal Board has previously noted that it is reasonable to expect that an applicant should present corroborating documentation of actions taken to resolve debts. The evidence that Applicant presented generally lacks such corroborating documentation. Moreover, as the Judge noted Applicant’s case in mitigation primarily amounts to a promise to pay the debts in the future, which we have previously stated, is not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. Adverse decision is affirmed.

CASE NO: 19-01599.a1

DATE: 01/15/2020

DATE: January 15, 2020

In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 11, 2019, DoD 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 October 25, 2019, after the hearing, Administrative Judge Noreen A. Lynch denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. The Judge’s favorable Guideline E findings have not been raised as an issue on appeal and are not discussed below.

Applicant raised the following issue on appeal: whether the Judge erred in her findings of fact or conclusions and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact**

Applicant, who is in her late 40s, has been working for Federal contractors since 1993. She is divorced and has no children. She has held a security clearance for over 25 years.

Under Guideline F, the SOR alleged seven delinquent debts totaling about \$46,000. She denied four of those allegations, claiming she had no knowledge of the denied accounts before receiving the SOR. In 2013, Applicant was unemployed for about nine months when she cared for her ailing father who is now deceased. In 2018, her fiancé passed away and she had to pay the funeral expenses. They had lived together for about ten years, and he handled all of the finances and bills. She acknowledged that they went through a financial hardship after he retired and that she had not been diligent.

At the time of the hearing, none of the debts were paid or in payment plans. She noted that she received credit counseling and was working on a debt consolidation plan but presented no evidence. In her post-hearing submission, she indicated that she contacted all of the creditors and planned to send monthly payments to settle some of the debts. She provided documentation showing one debt was canceled and she received an offer to settle another debt. She also indicated that she could not obtain information on a debt because the collection company had no record of her and she paid \$60 on a medical debt. She did not provide any proof of payments.

Applicant’s annual income is between \$100,000 to \$110,000. She has about \$8,000 in an IRA account. She purchased a 2017 luxury car and has a \$700 monthly car payment. “She has plans to pay her debts, but none of them have been resolved or are in a permanent payment plan. She presented no documentation of any payment plans or receipts for payments. She appeared somewhat vague and confused about the debts.” [Decision at 3.]

## **The Judge's Analysis**

Although Applicant experienced circumstances beyond her control, she did not act responsibly. She earns a good salary but does not seem to have a handle on her financial situation. She provided no evidence of payments or payment arrangements. After the hearing, she provided documents to show she is beginning to contact creditors to resolve the debts, but she has not initiated any plans. Promises to pay debts in the future are not sufficient. She has not met her burden to mitigate the security concerns.

## **Discussion**

Applicant challenges a number of the Judge's findings and conclusions. For example, Applicant contends that the Judge erred by concluding "[s]he has not done anything to resolve any of the accounts. She has not received financial counseling. There is no evidence of payments and payment plans." Appeal Brief at 1, quoting Decision at 8. In support of her argument, Applicant points to post-hearing submission that she prepared summarizing her actions to contact creditors and establish payment plans. This statement also reflects that she has sought the assistance of a debt consolidation company to help resolve some of the alleged debts. Given that this statement constitutes evidence of her actions to resolve the debts, including the establishment of payment plans, the Judge's conclusions quoted above, as well as some other similar conclusions, are not accurate. These errors, however, are harmless because they did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No 11-15184 at 3 (App. Bd. Jul. 25, 2013). In this regard, the Appeal Board has previously noted that it is reasonable to expect that an applicant should present corroborating documentation of actions taken to resolve debts. *See, e.g.*, ISCR Case No. 15-07062 at 2 (App. Bd. Nov. 21, 2017). The evidence that Applicant presented generally lacks such corroborating documentation. Moreover, as the Judge noted Applicant's case in mitigation primarily amounts to a promise to pay the debts in the future, which we have previously stated, is not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. *See, e.g.*, ISCR Case No. 14-04565 at 2 (App. Bd. Sep. 18, 2015). The Judge's conclusion that Applicant failed to meet her burden to mitigate the security concerns arising from her debts is sustainable.

In furtherance of her challenge to the Judge's conclusion that she has not done anything to resolve the delinquent debts, Applicant also points to a credit report (Government Exhibit 3) claiming it shows she disputed three of the alleged debts. For one of these debts, a charged-off debt for about \$7,400, the credit report does not reflect that it was disputed and, at the hearing, Applicant admitted she was responsible for it. Tr. at 62-63. For the remaining two debts, the credit report reflects that Applicant disputed them; however, she admitted she was responsible for both of those debts at the hearing. Tr. at 61 and 67-68. This assignment of error does not merit any relief.

In her brief, Applicant also challenges the Judge's finding that she purchased a 2017 luxury car. In doing so, she notes, for example, the car is a 2016 model. However, at the hearing, she identified it as a 2017 model. Tr. at 69. From our review of the evidence, the Judge's findings regarding the car are based on substantial evidence or constitute reasonable inferences that could be

drawn from the evidence. *See, e.g.*, ISCR Case No. 17-02225 at 2-3 (App. Bd. Jun. 25, 2019). Applicant also notes that the Judge erred in finding she has worked for Federal contractors since 1993. She notes that she worked for the Federal Government from about 2008 to 2013. Tr. at 13. This discrepancy regarding her prior employment is a harmless error. *See, e.g.*, ISCR Case No 11-15184 at 3.

Applicant further argues that she has worked diligently since her fiancé passed away to take responsibility for her finances and resolve her debts. These arguments are not sufficient to establish that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. “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). *See also* Directive, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

### **Order**

The Decision is **AFFIRMED**.

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