

KEYWORD: Guideline F

DIGEST: Applicant notes the disqualifying conditions that the Judge applied and cites to evidence that he believes demonstrates that these conditions have not been satisfied. We construe his argument to mean that the Judge erred in concluding that his circumstances raised security concerns. The Judge's findings about Applicant's ongoing, significant delinquent debt support his conclusion that Applicant's circumstances raise security concerns. Debts that have remained unpaid over a course of years can properly be characterized as a history of delinquent debt. Adverse decision is affirmed.

CASE NO: 19-01258.a1

DATE: 04/29/2020

DATE: April 29, 2020

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In Re:)	
)	
-----)	ISCR Case No. 19-01258
)	
)	
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 May 8, 2019, 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 hearing. On January 30, 2020, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Eric H. Borgstrom 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 adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant’s SOR alleges three delinquent credit card debts. He had used these cards to pay the mortgage on his and his wife’s primary residence. In 2014, anticipating that Applicant’s wife would soon be laid off from her job, the couple sold one of their two houses. In mid-2015, Applicant’s wife was indeed laid off. The couple sought and received a loan modification for their house and have not missed payments since then.

However, Applicant has not paid off his delinquent credit card debt, which amounts to a little over \$39,000. The cards became delinquent in mid-2016. Applicant hired a debt resolution company to assist in paying off his obligations. However, the company he hired was sued by the Federal Trade Commission for deceptive practices—apparently, the company was not forwarding payments to creditors. The company’s assets were placed in receivership, and Applicant had not received any return of his payments as of the close of the record.

In mid-2018, Applicant’s wife was approved for disability benefits. She received a lump-sum payment of about \$45,000 and began receiving monthly payments of about \$1,600 soon thereafter. Applicant and his wife currently have about \$41,000 in savings and usually have a minimum of about \$500 left over each month. Applicant entered into a settlement agreement with one of the creditors but did not provide evidence of any payments. He did not make contact with his other creditors because he believed that he could not make payments toward resolving the debts.

Despite attempting to reduce expenses, Applicant and his wife spent about \$7,200 for four trips to the Carribean between 2015 and 2019. During the time that they were using cash advances from their credit cards to make mortgage payments, they also leased luxury vehicles. He has started working with a law firm to address his debts but did not provide evidence that any payments or payment plans had been completed.

Applicant has received numerous awards for “exemplary work performance.” Decision at 4. He received favorable performance reviews for 2013 through 2018.

The Judge's Analysis

The Judge cited to evidence that Applicant's financial problems pre-dated his wife's layoff, insofar as he had already been drawing on his credit card accounts to make mortgage payments. Although he and his wife have about \$41,000 in savings, they have been unwilling to use these funds to pay down debts. The Judge concluded that Applicant had behaved reasonably by seeking and receiving a loan modification and by making payments to a debt resolution company. However, he found that Applicant had provided no evidence of debt payment since mid-2017.

In the whole-person analysis, the Judge noted Applicant's having held a clearance for many years without incident or concern. He also cited to Applicant's excellent work record. However, he concluded that Applicant's inaction regarding his delinquent debts raised concerns about his judgment that his evidence has failed to resolve.

Discussion

Applicant contends that the Judge erred in finding that he and his wife had a joint savings account. At the hearing, Applicant asked his wife, whom he had called as a witness, "how much we have in our savings account at this point," to which she replied, "In our savings account right now, around \$41,000 I believe." Tr. at 104. The challenged finding constitutes a reasonable inference from the evidence. Even if there were some error here, it did not likely affect the overall outcome of the case. Therefore, any such error was harmless. *See, e.g.*, ISCR Case No. 18-02581 at 3 (App. Bd. Jan. 14, 2020). The Judge's material findings are based upon substantial evidence.

Applicant notes the disqualifying conditions that the Judge applied and cites to evidence that he believes demonstrates that these conditions have not been satisfied. We construe his argument to mean that the Judge erred in concluding that his circumstances raised security concerns. The Judge's findings about Applicant's ongoing, significant delinquent debt support his conclusion that Applicant's circumstances raise security concerns. Debts that have remained unpaid over a course of years can properly be characterized as a history of delinquent debt. *See Directive, Encl. 2, App. A ¶ 19(c)*. *See also* ISCR Case No. 17-03146 at 2 (App. Bd. Jul. 31, 2018). Moreover, the Directive presumes a nexus or connection between admitted or proved circumstances under any of the Guidelines and an applicant's eligibility for a clearance. *See, e.g.*, ISCR Case No. 18-02581 at 4. Applicant has not rebutted the presumption of nexus in this case.

Applicant cites to various pieces of evidence that he believes supports his case for mitigation. Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record, nor are they sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 18-02872 at 3 (App. Bd. Jan. 15, 2020).

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle 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 Judge’s adverse 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 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: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board