

KEYWORD: Guideline F

DIGEST: We find no error in the Judge’s conclusions. The fact that a debt no longer appears on a credit report does not establish any meaningful evidence as to the disposition of the debt. Additionally, for Mitigating Condition 20(b) to apply, an applicant must not only experience a circumstance largely beyond his or her control (such as unexpected medical issues) that resulted in the financial problem, but also show he or she has acted responsibly under the circumstances. Adverse decision affirmed.

CASE NO: 19-03847.a1

DATE: 10/05/2020

DATE: October 5, 2020

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| In Re: |) | |
| ----- |) | ISCR Case No. 19-03847 |
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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 February 28, 2020, 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 July 16, 2020, after considering the record, Administrative Judge Shari Dam 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 discussion, we affirm the Judge’s decision.

The Judge’s Finding of Fact

Applicant, who is in his mid-50s, is married with five children. He served in the U.S. military for about four years and received an honorable discharge. With the exception of a one-month period, he has been steadily employed since 2010. He began his current job less than two years ago.

The SOR alleged that Applicant had six delinquent debts totaling about \$32,000. These debts arose about four to ten years ago. In responding to the SOR, Applicant denied the alleged debts, claiming he was no longer obligated to pay them because the statute of limitations for their collection had expired.

Applicant attributed the alleged debts to his child’s serious medical problems. Applicant’s medical insurance did not cover many of the bills. This resulted in him being unable to pay family living expenses and maintain debt payments. Although he contemplated filing bankruptcy, he determined it would be to his benefit to allow the statute of limitation on the debts to expire. He claimed that he paid taxes on some of the cancelled debts but failed to provide documentation corroborating those assertions. Many of the alleged debts are not reflected in a recent credit report.

The Judge’s Analysis

Applicant’s debts arose from conditions largely beyond his control, but he did not produce evidence to establish that he acted responsibly under the circumstances. The absence of a debt from a credit report does not establish it was satisfactorily resolved. Citing various Appeal Board decisions, the Judge concluded that Applicant’s reliance on the statute of limitations did not mitigate the security concerns arising from the alleged debts.

Discussion

In his appeal brief, Applicant challenges some of the Judge’s conclusions by arguing he presented evidence in mitigation. Noting that only one debt continues to appear on his credit report,

Applicant asserts that Mitigating Condition 20(a) applied because his alleged debts happened a long time ago, were so infrequent, happened under circumstances unlikely to recur, and do not cast doubt on his current reliability, trustworthiness, and good judgment. He also asserts Mitigating Condition 20(b) was established because his debts arose from conditions beyond his control, *i.e.*, his child's serious medical problems for which he did not have insurance. We find no error in the Judge's conclusions. The fact that a debt no longer appears on a credit report does not establish any meaningful evidence as to the disposition of the debt. *See, e.g.*, ISCR Case No. 17-00683 at 2 (App. Bd. Oct. 19, 2018). Additionally, for Mitigating Condition 20(b) to apply, an applicant must not only experience a circumstance largely beyond his or her control (such as unexpected medical issues) that resulted in the financial problem, but also show he or she has acted responsibly under the circumstances. *See* Directive, Encl. 2, App. A ¶ 20(b). In general, Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence, which is not enough to show that the Judge's analysis was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 18-02239 at 3 (App. Bd. Jul. 20, 2020).

Applicant also cites the Judge's finding that he did not participate in financial counseling and contends that financial counseling is required for those seeking bankruptcy and, since he did not file bankruptcy, he was being unfairly penalized for failing to seek financial counseling. This contention is not accurate. Mitigating Condition 20(c) is not limited to the credit counseling required to file bankruptcy. *See* 11 U.S.C. §§ 109(h) and 111. Rather, it provides that Guideline F security concerns may be mitigated by any financial counseling from a legitimate and credible source that is accompanied by clear indications the applicant's financial problem is being resolved or is resolved. Directive, Encl. 2, App. A ¶ 20(c). Applicant's Notice of Appeal included a Certificate of Counseling that post-dated the Judge's decision. The Board cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant has failed to establish the Judge committed any harmful errors. 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