

KEYWORD: Guideline F; Guideline B

DIGEST: Resolution of a delinquent debt does not preclude further inquiry or examination regarding it. Even if an alleged debt has been paid or canceled, a Judge may still consider the circumstances underlying the debt as well as any previous actions or lapses to resolve the debt for what they reveal about the applicant’s worthiness for a clearance. It is important to remember that “The Concern” under Guideline F in pertinent part states: “Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” Directive, Encl. 2, App. A ¶ 18. Adverse decision affirmed.

CASE NO: 20-01004.a1

DATE: 06/28/2021

DATE: June 28, 2021

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In Re:)	
-----)	ISCR Case No. 20-01004
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 19, 2020, 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 B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 31, 2021, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley 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. The Judge’s favorable findings on the sole Guideline B allegation and two of the five Guideline F allegations were not raised as an issue on appeal. Consistent with the following, we affirm.

The Judge’s Pertinent Findings of Fact and Analysis

Applicant, who is in his mid-40s, has been working for his current employer for about three years. He served on active duty in the military for 20 years. He was unemployed for about seven months following his military service. Divorced twice, he has three children. He has earned a bachelor’s degree. He held a security clearance while serving in the military.

The Judge found against Applicant on three delinquent credit card debts totaling about \$29,000. Responsibility for these debts was assigned to Applicant in a 2012 divorce decree. He defaulted on these debts due to his limited income, and they were charged off. Between August 2013 and November 2016, he was deployed overseas and did not make payments on the alleged debts. Between 2016 and 2018, he received cancellation of debt notices from the creditors of the three debts. No documentation was presented showing he paid Federal or state taxes on the canceled debts. Applicant had two other more recent delinquent debts, including a home equity loan secured by a second mortgage, that he resolved. In 2020, Applicant completed financial counseling to file bankruptcy but apparently never filed for that protection.

Colleagues and friends hold Applicant in high regard and attest to his reliability, trustworthiness, and dependability. His work evaluations reflect high marks for meeting organizational requirements and executing assigned responsibilities.

“Applicant’s history of financial difficulties associated with his long-delinquent home equity and credit card debts over a period of years (2013-2019) preclude his taking full advantage of any of the potentially available extenuating and mitigating benefits.” Decision at 13. While he encountered conditions beyond his control, such as his divorce and military deployments, he failed to show that he acted responsibly under the circumstances. He receives only minimal credit for receiving credit counseling. He has failed to take meaningful voluntary steps to address his delinquent debts.

In Applicant's case, his reliance on his state's statute of limitations as a predicate for obtaining debt cancellations from SOR creditors 1.b-1.d cannot be equated with good-faith efforts to repay overdue creditors. [Appeal Board citations omitted.] While his payoff of his SOR ¶ 1.a home equity loan through his arranged short sale in 2019 left the creditor with a short fall of over \$20,000 and a potential claim for the deficiency balance as a sold-out junior lien holder, SOR creditor ¶ 1.a accepted its payoff from the sale as payment in full. As a result, this debt, along with the \$241 debt owed to SOR creditor ¶ 1.e, are resolved favorably for Applicant. [Decision at 14.]

Discussion

In his appeal brief, Applicant does not challenge any of the Judge's specific findings of fact. Rather, he contends the Judge failed to adhere to Executive Order 10865 and the Directive by not considering all of the record evidence and by not properly applying the mitigating conditions and whole-person concept. For example, he argues that, upon receipt of the cancellation notices, the three credit card debts "were no longer at issue" and no further action regarding them needed to be taken. Appeal Brief at 5. This argument is not convincing. Resolution of a delinquent debt does not preclude further inquiry or examination regarding it. Even if an alleged debt has been paid or canceled, a Judge may still consider the circumstances underlying the debt as well as any previous actions or lapses to resolve the debt for what they reveal about the applicant's worthiness for a clearance. *See, e.g.*, ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017). It is important to remember that "*The Concern*" under Guideline F in pertinent part states: "Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." Directive, Encl. 2, App. A ¶ 18.

Applicant next highlights that he was deployed from 2013 to 2016, which covers most of the period between him being assigned the debts in the divorce decree and their eventual cancellation, and notes he did not receive billing notices from the creditors during that period. He states he was "not cognizant" of the debts. Appeal Brief at 5. This contention is not persuasive. The Judge addressed this issue by finding: "Although he apparently did not receive billing notices from his SOR ¶¶ 1.a-1.d creditors while he was deployed abroad, [Applicant] acknowledged his awareness of his payment responsibilities for the debts. (Tr. 63, 68)" Decision at 4. The transcript supports the Judge's finding that Applicant was aware of this indebtedness while he was deployed overseas.

Applicant also argues that the Judge erred in his application of Mitigating Conditions 20(a), 20(b), and 20(c). *See* Directive, Encl. 2, App. A ¶¶ 20(a), 20(b), and 20(c). For example, he contends Mitigating Condition 20(a) should apply because of "the length of time since the behavior . . . and the unusual circumstances that contributed to it, both of which make the behavior unlikely to recur." Appeal Brief at 7. None of his arguments, however, are sufficient to rebut the presumption that the Judge considered all of the evidence in the record or enough 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. 19-01400 at 2 (App. Bd. Jun. 3, 2020). The Judge’s ultimate conclusion that Applicant’s conduct in permitting his debts to languish for many years without addressing them reflects adversely on his national security eligibility is sustainable.

Applicant has failed to establish that the Judge committed any harmful error. 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 of the Judge 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