

KEYWORD: Guideline F

DIGEST: While we recognize that a debt-consolidation loan may be beneficial to an applicant in certain circumstances, we are unable to discern, based on the facts in this case, how merely substituting one form of debt for another, without more, reduces the security concerns arising from the alleged debts. As Department Counsel argues, Applicant's mitigation efforts amount to a promise to pay the indebtedness in the future, which is not a substitute for a track record of paying debts in a timely manner or otherwise acting in a financially responsible manner.
Favorable Decision Reversed

CASE NO: 20-01510.a1

DATE: 07/14/2021

DATE: July 14, 2021

_____)	
In Re:)	
)	
-----)	ISCR Case No. 20-01510
)	
)	
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 September 11, 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 March 18, 2021, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert Robinson Gales granted Applicant’s request for a security clearance. Department Counsel appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issue on appeal: whether the Judge’s favorable clearance decision is arbitrary, capricious, or contrary to law. Consistent with the following, we reverse.

The Judge’s Findings of Fact

Applicant, who is in his 30s, has been working as an independent subcontractor since the fall of 2019. He is married with two children. He has served in the National Guard. Department Counsel asserts, without providing documentary verification, that Applicant was granted a security clearance in 2008.

The SOR alleges that Applicant has four delinquent debts totaling about \$24,700. Each of these accounts was charged off between late 2017 and the spring of 2019. While he experienced a period of unemployment for about three months between 2013 and 2014, he attributes his financial problems to more recent factors, *i.e.*, inconsistent income while he served in the National Guard and the termination of his wife’s employment when she became pregnant and remained home to care for their first child.

In February 2021, Applicant obtained a debt-consolidation loan of about \$20,000 to address his debts. With this loan, he resolved three of the alleged debts totaling over \$20,000. His efforts to resolve the fourth debt of about \$4,490 were rebutted by the collection agent because the debt was pending assignment to another collection company. Applicant failed to submit any documentation showing he has made payments on the debt-consolidation loan.

Despite his financial difficulties, Applicant made three trips to Europe between 2017 and 2019 to visit his wife’s family. These trips varied in length between 6-20 days. “Applicant’s Personal Monthly Budget reports \$4,400 in current net monthly income; \$3,513 in monthly expenses, including \$829 for the consolidation loan; and a monthly remainder of \$887 that might be available for discretionary spending or savings.” Decision at 4.

The Judge’s Analysis

Three mitigating conditions fully or partially apply. These are Mitigating Conditions ¶¶ 20(a), *the behavior happened so long ago, was so infrequent, or occurred under such circumstances*

that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; 20(b), the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and 20(d), the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant claimed he had insufficient funds to pay his debts because his wife stopped working upon becoming pregnant and because his income was inconsistent while serving in the National Guard. “It is troubling that although Applicant claimed that he had insufficient funds to maintain his accounts in a current status, he managed to take several personal trips to [Europe] in 2017, 2018, and 2019.” Decision at 7.

“Applicant seemingly ignored his delinquent accounts until five months after the SOR was issued.” *Id.* However, he has resolved three of the four accounts alleged in the SOR, and his efforts with respect to the fourth account have been rebuffed by the collection agent. “While the timeliness of his efforts to resolve his debts is not good, the subsequent substantial positive and successful efforts are very good. His strong showing that most of the accounts are now resolved, or about to be resolved, along with the amount of money that is available for discretionary spending or savings each month, indicates that the financial problems are substantially in the past.” Decision at 8. The mitigating evidence under the whole-person concept is substantial, “but still not exactly compelling.” Decision at 9. “This decision should serve as a warning that Applicant’s failure to more timely and aggressively resolve the one remaining debt for \$4,491, or make timely monthly loan consolidation payments, may adversely affect his future eligibility for a security clearance as security officials may continue to monitor his finances.” Decision at 10.

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, Encl. 2 App. A ¶ 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. 17-03229 at 4 (App. Bd. Jun. 7, 2019).

Department Counsel contends that the record in this case does not support the Judge's mitigation and whole-person analysis. She persuasively argues that the Judge erred in his analysis of the evidence.

A security clearance decision must be an overall common sense determination based on careful consideration of the adjudicative guidelines. Directive, Encl. 2, App. A ¶ 2(c). In this case, the Judge's conclusion that Applicant has made a "strong showing that most of the accounts are now resolved" does not take into consideration an important aspect of the case, *i.e.*, whether Applicant's mitigative efforts have actually improved his financial situation. When viewed from a macro perspective, the mitigative value of Applicant's efforts to resolve his financial problems remains uncertain. He obtained a debt-consolidation loan to pay three of the four alleged debts. In effect, he substituted one form of indebtedness (credit card debt) for another form (a debt-consolidation loan) or, looking at it in a different way, he converted old debt into new debt. He did not provide documentation setting forth the details of the debt-consolidation loan or show that he has made any payments toward this new loan. The evidence he presented fails to demonstrate that his financial situation has improved, fails to establish any meaningful track record of payments to reduce the indebtedness at issue, and fails to show that his financial problems are under control. In short, he has failed to prove his total indebtedness has been resolved in any significant manner. While we recognize that a debt-consolidation loan may be beneficial to an applicant in certain circumstances, we are unable to discern, based on the facts in this case, how merely substituting one form of debt for another, without more, reduces the security concerns arising from the alleged debts. As Department Counsel argues, Applicant's mitigation efforts amount to a promise to pay the indebtedness in the future, which is 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).

Department Counsel argues that, even though the Judge discussed many of Applicant's financial shortcomings, he effectively disregarded them in his analysis. We agree. For example, the Judge found that Applicant failed to take any action on the alleged debts until five months after he received the SOR. In his analysis, the Judge also cited ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018) and ISCR Case No. 17-00569 at 3-4 (App. Bd. Sep. 18, 2018) for the proposition that an applicant who begins taking action to resolve financial problems only after being placed on notice that his or her clearance is in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. Yet, the Judge summarily dismisses this issue by stating, "Applicant's delayed actions under the circumstances no longer cast doubt on his current reliability, trustworthiness, and good judgment. *See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010)."¹ Decision at 8. The Judge provided no analysis supporting that conclusion, which is not sustainable based on the facts of this case. Applicant's lack of action in addressing his delinquent debts over the years and his inconclusive efforts taken to

¹ The Judge fails to explain how the cited Appeal Board decision supports his conclusion that Applicant's delays no longer cast doubt on his current reliability, trustworthiness, or good judgment. After reviewing that decision, we do not see how the cited decision supports that conclusion.

resolve them only after receiving the SOR and Department Counsel's File of Relevant Material undermine any conclusion that he acted responsibly or in good-faith under the circumstances. The mitigative value of Applicant's purported corrective action is significantly diminished because it was not initiated until well after his security clearance was placed in jeopardy.

We conclude that the Judge's decision is arbitrary and capricious because it fails to consider an important aspect of the case and runs contrary to the weight of the record evidence. Furthermore, we conclude that the record evidence, viewed as a whole, is not sufficient to mitigate the Government's security concerns under the *Egan* standard. The 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