



**DEPARTMENT OF DEFENSE  
 DEFENSE LEGAL SERVICES AGENCY  
 DEFENSE OFFICE OF HEARINGS AND APPEALS  
 APPEAL BOARD  
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Date: September 29, 2022

In the matter of:	)	
	)	
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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 October 23, 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 E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 9, 2022, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline F, the SOR alleged 17 financial concerns. The Judge found favorably for Applicant on 16 and adversely on one. Under Guideline E, the SOR makes two allegations: first, that Applicant was terminated from employment in 2018 for misusing his corporate credit card, making payments for that card that were returned for insufficient funds, and borrowing approximately \$68,000 from other employees; and, second, that Applicant provided financial support from November 2013 through at least 2017 to two strippers, one of whom was also a prostitute. The Judge found adversely to Applicant on both Guideline E allegations.

Applicant raised the following issues on appeal: whether the Judge erred in his findings of fact and whether he failed to consider all available evidence in applying the mitigating conditions, rendering his adverse decision arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

**The Judge's Findings of Fact:** The Judge's findings are summarized in pertinent part.

Applicant is sixty years old. After graduating college in 1984, he served on active duty until 1992 and has worked for defense contractors since 1993. Married in 1983, Applicant divorced in 2018 and has three adult children.

### Financial Considerations

Applicant attributed his financial problems to several factors, including his spouse's excessive alcohol consumption, their separation and ultimate divorce, and assistance to one of his sons who struggled with substance abuse. His son's substance abuse issues cost him his scholarship, and Applicant paid about \$100,000 for college tuition.

Around 2015, Applicant decided to delay mortgage payments, which caused his credit score to decrease and interest rates for borrowing to increase. He borrowed from friends to reduce interest expenses. Unable to sell his house for market reasons, Applicant was also unable to renegotiate the first mortgage and home equity loan and was close to foreclosure by 2017.

Applicant anticipated receiving two bonuses totaling about \$55,000 in early 2018 and planned to use those funds to resolve several debts. However, he was terminated from his employment in January 2018 prior to receiving the bonuses. Although he secured new employment as a DoD contractor, he took an initial \$60,000 cut in annual pay and lost an additional \$60,000 in annual salary as he again switched employment.

Applicant's cuts in pay reduced his annual salary to \$120,000. After deductions for alimony payments and medical bills, Applicant qualified for Chapter 7 bankruptcy. In October 2020, Applicant's nonpriority unsecured debts totaling approximately \$474,000 were discharged. Applicant's bankruptcy petition also revealed priority debts that totaled approximately \$88,000, to include student loans, delinquent Federal taxes for tax years (TY) 2017 and 2018 of about \$8,000 and \$23,000, and delinquent state taxes for TY 2018 of \$21,000. Shortly after the October 2020 discharge of his debts, Applicant received a \$40,000 raise. As of March 2022, his monthly gross income (AGI) was \$14,000.

The SOR alleges a Federal tax debt of \$19,000 (SOR ¶ 1.a.). Applicant resolved a Federal tax debt for TY 2017 in June 2020. Applicant's AGI for TY 2018 was almost \$400,000, in part because he withdrew savings from a 401(k) account to pay debts. As of March 2022, his IRS debt for TY 2018 was about \$37,000. Since 2019, his income tax refunds have been applied to his Federal tax debt. In 2021, Applicant made only two payments to the IRS to address his tax debt for TY 2018. In January 2022, he began a payment plan of \$526/month, and his March 2022 IRS tax transcript for TY 2018 reflected his first two payments under that plan.

Applicant is current on a repayment plan for his 2018 state tax debt (SOR ¶ 1.b.). The debts alleged at SOR ¶¶ 1.c. through 1.q. are a mix of consumer debts, medical debts, judgments, and loans from coworkers. All fifteen debts and judgments were discharged in Applicant's October 2020 bankruptcy.

### Personal Conduct

The SOR alleges that Applicant was terminated from his job in January 2018 for using his corporate credit card for personal expenses, paying for the card with checks returned for insufficient funds on about six occasions, and borrowing about \$68,000 from various employees. Applicant stated that prior to 2016 there was no prohibition against use of the corporate card for personal expenses if the card was paid off every month, but did not provide any documents to support this assertion. In 2016, Applicant learned that use of the credit card for personal expenses was prohibited, but was advised that the primary corporate concern was that the card was paid off on a monthly basis. In October 2017, Applicant missed a payment on the card. He was suspended in December 2017 and terminated in January 2018.

Applicant stated that he made the payments using electronic fund transfers, some of which were returned for insufficient funds. Applicant knew some of his EFTs would be returned at the time he filed them. He did not fully repay the debt he generated using his corporate credit card, and the remainder was discharged in his bankruptcy.

Because of concern about repaying the corporate credit card, Applicant borrowed sums from subordinates ranging from \$1,000 to \$10,000. Applicant was the approval authority for bonuses for some of the subordinates who lent him funds. He did not disclose to his supervisor that he was borrowing from subordinates because he did not want to compromise his supervisor. Applicant stated that the loans were voluntary and based on friendship, and he has repaid the loans.

In approximately 2015 to 2016, Applicant borrowed funds from four former coworkers totaling \$225,000. These four debts were discharged through bankruptcy.

The SOR also alleges that, from November 2013 to at least 2017, Applicant provided financial support to two strippers, one of whom was also a prostitute. In November 2013, Applicant met L at a strip club he frequented. To enable L to change her lifestyle, Applicant initially paid for her hotel rooms, subsequently rented an apartment for her, and eventually allowed her to live at his home for a period. Additionally, he paid for her drug-rehabilitation program. At the time of his hearing in April 2022, Applicant was providing about \$200 monthly to help with expenses, as well as an occasional larger lump sum. In 2015, Applicant met stripper A at the same club. Stripper A had a pending felony charge because of drug involvement. Applicant paid her court fees and provided her with support to allow her to leave employment as a stripper. Stripper A also moved into his home for a period of time. At the time of Applicant's hearing, he estimated that he was providing about \$200 monthly to her for essentials. Applicant was sexually involved with both L and A at some point in his relationship with each.

His intentions were to help L and A end their employments at the strip club and to assist in their drug rehabilitation. He believed his intervention in the lives of L and

A saved their lives because they were headed down a negative path that would result in a terrible outcome from drug abuse and the bad influence of working in a strip club. [Decision at 7.]

**The Judge’s Analysis:** The Judge’s analysis is summarized in pertinent part.

#### Guideline F

Applicant described several circumstances beyond his control that adversely affected his finances, to include medical and substance abuse problems of family members, with related losses of scholarship or employment. Other circumstances were not beyond Applicant’s control, to include abuse of his corporate credit card, his job termination, and his payments to L and A.

Applicant resolved \$474,000 in debts through Chapter 7 bankruptcy, and the debts in SOR 1.c. through 1.q. are consequently mitigated. “The financial conduct leading up to the bankruptcy continues to be relevant.” Decision at 10. The Federal tax debt alleged at SOR ¶ 1.a. is not mitigated. Applicant has had a delinquent Federal income tax debt since 2018 and currently owes more than \$30,000 for TY 2018. During the last five years, he has earned over one million dollars. He did not prove that he was unable to make greater progress paying his Federal income tax debt. “Under all the circumstances, he failed to establish mitigation of financial considerations security concerns.” Decision at 10–11.

#### Guideline E

Applicant admitted that he was terminated from his employment for using his credit card for personal expenses, not paying off the credit card each month, and borrowing funds from various employees. He borrowed money from subordinates to whom he could provide benefits. “Borrowing from subordinates under these circumstances creates a serious conflict of interest and shows poor judgment.” Decision at 12.

Applicant admitted that he provided financial support, as alleged, to L and A. They both worked in a strip club when he met them and at some point were involved with illegal drugs. Engaging in sexual relations with strippers or users of illegal drugs is not criminal conduct, but raises serious judgment issues. Applicant was experiencing severe financial problems, including not timely paying his Federal and state income taxes. He was spending money in a strip club and giving money to L and A that could instead have been used to pay his Federal income taxes, and he continues to give money to both women even though his Federal incomes taxes are not fully paid. “There is no evidence that his current employer or community are aware of his abuse of his corporate credit card, borrowing from subordinates, and payments to L and A. . . . Personal conduct security concerns are not mitigated.” Decision at 12.

#### **Discussion**

Applicant challenges the Judge’s findings of fact and his application of the mitigating conditions in several regards. First, Applicant takes issue with the Judge’s findings regarding abuse of the corporate credit card. Both at the hearing and on appeal, Applicant maintained that

he had a long history of using the corporate card for personal expenses, that such use was permitted as long as he made the monthly payment, and that, even when he was counseled that there was a “new policy” prohibiting use for personal expenses, he was told “to just pay my bill on time and there would be no problem, clearly mixed signal guidance.” Appeal Brief at 5. The Judge found that Applicant provided no documentation that he was permitted to use his corporate credit card for personal expenses. Applicant challenges this finding, noting that he was obligated to tell the truth:

By adding a requirement for “documentation” the court departs from the rules guiding the proceeding and by extension rejects my testimony that I did not believe I was “abusing” the [credit] card. Throughout the judgment the Court continues to regard my use of the [credit] card as abuse. . . . The Court fails to recognize or accept my explanation of the circumstances for the conduct[.] Appeal Brief at 6.

We construe this argument to be that the Judge did not comply with the criteria set forth in the Directive for making and evaluating findings of fact. The standard that we use in evaluating the sufficiency of a Judge’s findings is set forth in Directive ¶ E3.1.32.1: “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Testimony is obviously evidence and, in an appropriate case, it can support sustainable findings on its own. *See, e.g.*, ISCR Case No. 17-02588 at 5 (App. Bd. Mar. 5, 2019). However, the Board has previously stated a Judge is not required to accept testimony merely because it is unrebutted. *See, e.g.*, ISCR Case No. 05-03554 at 5 (App. Bd. Aug. 23, 2007). As a matter of common sense, the Judge may consider the lack of corroboration in determining the weight to be given to that evidence. *See, e.g.*, ISCR Case No. 19-00151 at 7 (App. Bd. Dec. 10, 2019). We find no error in the Judge’s comment about a lack of corroborating evidence. Moreover, we note that Applicant’s assertions are contradicted in large part by his employer’s Incident Report of January 2018:

In August 2017 [Applicant] had paid [his corporate card] account with checks that were returned for insufficient funds. [Applicant] was counselled and it was discovered that [he] was using the account for personal matters and was told that it was against policy to use the card for personal reasons. . . . After being counselled by [Management] that use of the Corporate card is prohibited he continued to use the card for months after the meeting. [GE 2 at 2–3.]

Second, Applicant challenges the Judge’s findings and conclusions regarding his Federal tax debt, arguing that the Judge’s timeline is incorrect, that the Judge fails to acknowledge his payments towards the debt, and that the Judge portrays “a narrative of irresponsible behavior . . . by inaccurately citing concerns over money spent at strip clubs and on strippers while failing to recognize that evidence clearly documents the tax debt was . . . long after I stopped going to strip clubs and strippers.” Appeal Brief at 1–2. These arguments are unpersuasive.

Under Guideline F, the Judge determined that Applicant had not mitigated the Federal tax debt, as he currently owes more than \$30,000 for TY 2018 despite the fact that he has the funds available to pay the debt. This conclusion is supported by the record, which confirms that Applicant made intermittent payments in 2021 and only began regular payments under a payment

plan in January 2022, fourteen months after issuance of the SOR and two months prior to his hearing. The timing of debt payments is relevant in evaluating an applicant's case for mitigation. *See, e.g.*, ISCR Case No. 17-00294 at 3 (App. Bd. Aug. 8, 2018). An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. *See, e.g.*, ISCR Case No. 17-01256 at 5 (App. Bd. Aug. 3, 2018).

Applicant takes issue with the Judge's comment that "[t]he financial conduct leading up to the bankruptcy continues to be relevant." Decision at 10. To the extent that Applicant is contending the Judge could not consider the mitigated debts in his analysis of the remaining unmitigated debt (*i.e.*, the Federal tax delinquency), we do not find that argument persuasive. A Judge is not required to analyze unmitigated debts in an isolated or piecemeal manner. An applicant's financial history is relevant in Guideline F cases. Even when a Judge concludes the security concerns arising from certain alleged debts have been mitigated, those debts may remain relevant in the Judge's analysis of the remaining Guideline F allegations. For example, similar to the Board's holdings involving consideration of non-alleged conduct, mitigated debts may be considered (a) in evaluating an applicant's evidence of extenuation, mitigation, or changed circumstances; (b) in considering whether the applicant has demonstrated successful rehabilitation; (c) in assessing an applicant's credibility; and (d) in applying the whole-person concept. *See, e.g.*, ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017), addressing authorized purposes for which non-alleged conduct may be considered. Depending on the circumstances of a case, mitigated debts may remain relevant in assessing such matters as the recency and frequency of financial problems, whether those problems are being resolved or are under control, whether they are unlikely to recur, and whether an applicant has acted responsibly. In this case, we find no error in the Judge's comment that Applicant's financial conduct leading up to the bankruptcy, which involved the mitigated debts, remained relevant.

Under Guideline E, the Judge considered that Applicant was "spending money in a strip club and giving money to L and A" during a timeframe in which he was experiencing "severe financial problems, including not timely paying his Federal and state income taxes." Decision at 12. He concluded that those payments "establish personal conduct judgment concerns." Again, this conclusion is supported by the record, which confirms that Applicant has owed delinquent Federal taxes since he filed his TY 2017 tax return in 2018, that Applicant frequented strip clubs until approximately 2018, and that he continued financial support to the two women whom he met there through at least the date of his hearing. (AE C at 1; Tr. at 73–74, 93.)

The remainder of Applicant's brief is fundamentally an argument that the Judge failed to consider or misweighed mitigating evidence. For example, Applicant highlights evidence, such as his son's overdose, and contends the Judge did not acknowledge that evidence. The Judge, however, found that Applicant's son lost his college scholarship due to substance abuse. A Judge is not required to discuss each and every piece of record evidence, which would be a practical impossibility. *See, e.g.*, ISCR Case No. 12-01500 at 3 (App. Bd. Aug. 25, 2015). None of Applicant's arguments are enough to rebut the presumption that the Judge considered all of the record evidence or to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Moreover, the Judge complied with the requirements of the

Directive in his whole-person analysis by considering all evidence of record in reaching his decision. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020).

Applicant failed to establish that the Judge committed any harmful error or that he should be granted any relief on appeal. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the record. “The general standard is that a clearance may be granted only when ‘clearly consistent with 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 national security.”

### **Order**

The decision is **AFFIRMED**.

Signed: James F. Duffy  
James F. Duffy  
Administrative Judge  
Chairperson, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: Moira Modzelewski  
Moira Modzelewski  
Administrative Judge  
Member, Appeal Board