

KEYWORD: Guideline F

DIGEST: Applicant has demonstrated that the Judge made an error with regard to a \$455 debt. However, the error is harmless. Adverse decision affirmed.

CASENO: 14-04660.a1

DATE: 12/21/2015

DATE: December 21, 2015

In Re:)
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-----) ISCR Case No. 14-04660
)
)
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 January 28, 2015, 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 that the case be decided on the written record. On October 20, 2015, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Arthur E. Marshall, Jr. denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable decision.

The Judge made the following findings of fact: Applicant is 45 years old. He failed to file timely his federal and state tax returns for 2011. He filed those returns in 2013. For that year, he owed a total of \$4,000. The balance grew to approximately \$7,160 in 2014. He was previously delinquent to the IRS in the approximate amount of \$10,000 in tax year 2009 and tax year 2010. Applicant became delinquent on a credit card in early 2013 after forgetting about it. He then began to make regular payments on the account that were routinely one to two months late. This account was settled. In 2011, Applicant became delinquent on a shopping catalog account for \$455 and a home decor catalog for \$383 because he could not afford to honor the balances in 2012 and he then forgot about the debts. No documentary evidence was offered to show any progress on the shopping catalog account, or to support Applicant's contention that he had contacted the creditor in 2014. An account statement entered into the record established that Applicant had satisfied the home decor account. A telecommunications account fell delinquent in the amount of about \$200, and Applicant related that he did not know about the delinquency until 2014. Documentary evidence establishes that the account has been paid in full.

Applicant has been three months or more behind on his mortgage and a credit card account in the past few years. He has a history of falling behind on his mortgage for numerous reasons, all stemming from insufficient funds. Applicant also has multiple student loans outstanding, with deferments ending in the near future. No current documents reflect his present expenses or obligations. There is evidence of some financial counseling, but the extent of that counseling is not described. In sum, of the five debts at issue, Applicant provided documentary evidence that he has addressed three of them. He did not disclose whether he has adopted or implemented a reasonable plan or strategy for addressing his remaining debts.

The Judge reached the following conclusions: the delinquent debts at issue are recent and multiple in number. The circumstances surrounding these debts are sketchy at best. Therefore, it cannot be determined if a similar situation might not again occur. Applicant linked no unforeseeable or unexpected situations that adversely impacted his finances to the debts at issue here, and he presented no evidence indicating that he acted reasonably under the circumstances. At most, Applicant attributed some of these delinquent debts to having been too busy to keep up with his debts and tax filings. Although Applicant satisfied or settled three of his debts, his two largest debts remain unaddressed. Whether his strategy is to satisfy his smallest debts first is unclear. Indeed, whether he has a reasonable plan for addressing his debts cannot be determined. The IRS

documentation purporting to show established repayment plans does not establish that he has a track record of regular payment on those debts. No progress has been made on the \$455 debt, which he apparently rediscovered over a year ago. Applicant failed to provide evidence of, or otherwise explain, a holistic approach for addressing his delinquent debts in a coherent manner. Financial considerations security concerns remain unmitigated.

Applicant's appeal submission contains matters that are not part of the record below. The Board cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant argues that, contrary to the Judge's findings, he paid the \$455 debt on March 6, 2015.¹ He states that a credit report in the record reflects this. Applicant also asserts that he has formulated a budget and plan to ensure timely payments on his delinquent tax debts and on his other outstanding obligations. He takes exception to the Judge's characterization that he is unwilling to fulfill his financial obligations and that he refuses to comply with federal tax laws. He also objects to the Judge's suggestion that he will not be able to meet his future financial obligations.

Regarding the Judge's finding that there was insufficient evidence to establish that the \$455 debt had been paid, Applicant's argument has merit. There are two credit reports in the record. The older of the two, dated February 2014, shows only that the \$455 debt was charged off. The second report, which dates from June 2015, shows the debt in question as having no past due amount, and that the last payment was made in March 2015, which is consistent with Applicant's statements on the matter. The report on the debt also states, "account paid for less than full balance, paid charge off." An activity designator on the report for the account states, "Paid." Given the state of the record, the Board concludes that the Judge erred when he found that Applicant had not paid the \$455 debt.

Having concluded that the Judge erred, the Board must now determine whether or not the error was harmful. In light of the Applicant's financial situation as a whole, and in light of other aspects of Applicant's debt profile that were discussed by the Judge, it is unlikely that the status of the \$455 debt, if changed to reflect payment, would lead to a different result in Applicant's case. *See, e.g.*, ISCR Case No. 06-20062 at 2 (App. Bd. Jul. 15, 2008).²

Applicant's assertions regarding his efforts to resolve his substantial tax indebtedness are uncorroborated by other record evidence, and the Judge did not err by treating them as such. Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. *See, e.g.*, ISCR

¹This was Applicant's position at the time he answered the SOR.

²The other debt on which the Judge concluded against Applicant was his delinquent tax obligation. This debt was several orders of magnitude greater than the debt which the Judge erroneously found to be unsatisfied. The tax debt and Applicant's overall history of tax delinquencies were sufficient alone to support the Judge's ultimate conclusion under Guideline F.

Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). Applicant's statements about his finances was evidence that the Judge was required to consider. However, such evidence does not mandate a favorable decision, particularly when they are uncorroborated. Applicant's arguments are not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In this case, the Judge made sustainable findings that Applicant had a lengthy and substantial history of not meeting financial obligations in a timely manner. Central to the Judge's analysis was his conclusion that, given the absence of evidence to corroborate Applicant's claims of an established, systematic plan to resolve his tax debt, there was no basis to conclude that Applicant's finances were under control and that his situation was likely to improve. This conclusion is supported by the record. The Judge adequately discussed why, given these factors, the disqualifying conduct established under Guideline F was not mitigated.

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes 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 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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

Order

The Judge's decision is AFFIRMED.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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