

KEYWORD: Guideline F

DIGEST: The Judge quoted Directive, Enclosure 2 ¶ 18 at length. Applicant's argument that the Judge relied on only a narrow portion of the paragraph is not persuasive. Adverse decision affirmed.

CASENO: 12-09829.a1

DATE: 11/25/2015

DATE: November 25, 2015

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| In Re: )                           |                        |
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| ----- )                            | ISCR Case No. 12-09829 |
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| Applicant for Security Clearance ) |                        |
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**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 April 29, 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 a hearing. On August 19, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether his financial circumstances raised concerns under Guideline F and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact**

Applicant lives with his fiancée, their two children, and a child of hers. He has worked for the same employer since 2008 and was steadily employed before then. He has not experienced unemployment. In 2008, when he took his current position, he had to move to a different state. He left for his new domicile without resolving his financial issues.

Applicant’s SOR lists several delinquent debts, two of which the Judge resolved against him. One of these two is for state taxes in the amount of about \$4,900. This obligation is the subject of a lien against Applicant, entered in late 2009. The debt originated in 2005 or 2006. Applicant has made some payments on this debt over the years, but has not been consistent. For example, he stated that he had entered into a payment agreement in 2010 and started making monthly payments but stopped doing so after the birth of his daughter a few months later. At the hearing, he stated that after he completed his security clearance application (SCA), he entered into a payment plan with the state but made only one payment of \$150 between 2012 and 2015. In early 2015, he got in touch with the state in an effort to work out an agreement but could not make the initial payment of \$1,500. After the hearing, he presented three checks made out to the comptroller of the state, which he stated were a down payment for a payment plan. He did not provide evidence as to whether he actually has such a plan or, if so, what its terms may be.

The other debt was for a loan Applicant received in 2009 so he could pay off his tax delinquency. Applicant was to pay \$90 twice a month and made the last two months’ payments but missed “two to three months before then.” Decision at 4. Applicant did not use these funds solely to pay off his tax debt. He currently plans to borrow money from his parents to pay off this debt. Although he submitted evidence that he had paid \$188 in July 2015, there is no evidence of other payments. Neither is there evidence that the debt has been resolved. The debt has a current balance of \$2,400. Applicant’s annual salary for 2015 is \$99,000 and for 2014 it was \$93,000. Applicant admitted that he did not budget his income or pay attention to his expenses. He acknowledged that he had been irresponsible with money. Applicant’s fiancée also has a job, but Applicant does not know how much money she earns. In addition to his job, he is a videographer. About three years ago he purchased both a camera and lens, costing about \$1,200.

Applicant enjoys a good reputation for integrity, reliability etc. He is said to provide exceptional service and is a motivated professional.

### **The Judge's Analysis**

The Judge concluded that Applicant's financial difficulties, which included numerous delinquent debts, an unpaid tax lien, and an unpaid loan raised two disqualifying conditions, 19(a)<sup>1</sup> and 19(c).<sup>2</sup> As stated above, the Judge entered favorable findings regarding all but the tax lien and the loan. In concluding that Applicant had not mitigated these allegations, she noted evidence that he had been consistently employed for several years and has been aware of the state of his finances since at least 2012, when he completed his SCA. Nevertheless, despite promises to do so, he had failed to resolve the tax lien or the loan. She concluded that he had not demonstrated responsible action in regard to his debts. The Judge also stated that it is not clear from the record where Applicant got the funds to make the post-hearing payments on the tax lien. She concluded that Applicant had not been attentive to his debt problems. In the whole-person analysis, the Judge cited to evidence that Applicant had been consistently employed for many years yet failed to provide a reasonable explanation for his failure to address his debts. She stated that Applicant's attitude toward his duty to pay taxes "has been indifferent at best." *Id.* at 8.

### **Discussion**

Applicant states that he has held a clearance since 2002 and has demonstrated trustworthiness in the way in which he carries out his duties. He argues that, in concluding that his circumstances raised security concerns, the Judge relied simply on language from Directive, Enclosure 2 ¶ 18 that persons who are financially overextended may be at risk of engaging in illegal acts to pay their debts.

We do not find this argument persuasive. At the beginning of her analysis, the Judge quoted the bulk of Directive, Enclosure 2 ¶ 18.<sup>3</sup> This paragraph describes the reasons that financial problems can raise security concerns. The reasons are not simply that an applicant might be tempted to compromise classified information in order to pay his debts but that financial problems can reflect upon the applicant's judgment, self control, and other characteristics essential to protecting national security information. *See, e.g.*, ISCR Case No. 14-01479 at 2 (App. Bd. Sep. 2, 2015). In the case before us, evidence that Applicant had substantial delinquent debts of long standing, including a tax lien, was sufficient to raise a concern that he may be lacking in these qualities. Viewed in light of the record as a whole, the Judge did not err in her application of the concern set

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<sup>1</sup>Directive, Enclosure 2 ¶ 19(a): "inability or unwillingness to satisfy debts[.]"

<sup>2</sup>Directive, Enclosure 2 ¶ 19(c): "a history of not meeting financial obligations[.]"

<sup>3</sup>"Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds."

forth in ¶ 18 to the facts of the case. Applicant’s argument is not sufficient to undermine the Judge’s conclusion that his circumstances raised Guideline F security concerns.

Applicant argues that the Judge did not consider, or that she mis-weighed, evidence that he has held a clearance for many years without incident or concern and that he enjoys a good reputation for his character. He also argues that his failure to have resolved his tax lien has never posed a threat to national security. Applicant’s arguments are not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 12-08412 at 2 (App. Bd. Sep. 11, 2015). Neither is his argument sufficient 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. 14-05251 at 3-4 (App. Bd. Oct. 5, 2015). Regarding his good security record, the government need not wait until an individual mishandles or fails to safeguard classified information before it can make an unfavorable security clearance decision. Even those with good prior records can encounter circumstances in which their judgment and reliability might be compromised. *See, e.g.*, ISCR Case No. 14-04648 at 3 (App. Bd. Sep. 9, 2015). *See also Adams v. Laird*, 420 F. 2d 230, 238-239 (D. C. Cir. 1969), *cert. denied* 397 U.S. 1039 (1970).

Applicant argues that the Judge gave no reason for concluding that his character evidence was insufficient to justify a favorable decision. In the first place, a Judge is not required to discuss each and every piece of evidence in the record, which would be an impossibility. *See, e.g.*, ISCR Case No. 12-01500 at 3 (App. Bd. Aug. 25, 2015). Moreover, when, as here, an applicant’s circumstances raise security concerns, it is the applicant who must present evidence in mitigation and who bears the burden of persuasion. Directive ¶ E3.1.15. The mere presence of some mitigating evidence, whether character references or other favorable information, does not impose a duty on a Judge to render a favorable decision. *See, e.g.*, ISCR Case No. 14-01170 at 3 (App. Bd. Sep. 18, 2015). The Judge must evaluate an applicant’s mitigation evidence in light of the entirety of the record evidence to see if it meets the standard set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988): “a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” In the case before us, the Judge concluded that Applicant had not met his burden of persuasion. Her overall decision is sustainable, given the record that was before her. Evidence that Applicant has provided excellent services at his job and is reliable in the performance in his duties does not necessarily mitigate concerns about longstanding debt that is the result of Applicant’s own admitted irresponsibility.<sup>4</sup> Although Applicant disagrees with the weight that the Judge assigned to his favorable evidence, Applicant’s brief is not sufficient to show that the Judge mis-weighed the evidence, as stated above.

Applicant cites to the closing argument by Department Counsel, which Applicant describes as being favorable toward his effort to maintain his clearance. He attributes to Department Counsel the opinion that Applicant’s tax problems do not raise concerns. Appeal Brief at 5. In the first place, argument by counsel is not evidence. *See, e.g.*, ISCR Case No. 14-03392 at 2, Note 3 (App. Bd. Apr. 15, 2015). Moreover, although Department Counsel discussed aspects of Applicant’s case

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<sup>4</sup> “[Applicant]: It’s . . . a lot of non-budgeting. Not buying the necessary items, but just money is not being budgeted and money is not being watched. It’s not being spent the way it should be spent.” Tr. at 61-62.

that were favorable to him, he also noted evidence that cut the other way, specifically the tax lien. Department Counsel appears to have stated that *failure to file* returns was not at issue in this case but that the tax lien was a concern, in his view the biggest remaining at the close of the hearing.<sup>5</sup> Department Counsel's argument does not buttress Applicant's argument on appeal.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. An applicant who has failed repeatedly to fulfill his or her legal obligations, such as paying income tax, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. *See, e.g.*, ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). *See also Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). The decision is sustainable on this record under the standard set forth in *Egan, supra*. *See also* Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

### Order

The Decision is AFFIRMED.

Signed: Michael Y. Ra'anan  
Michael Y. 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

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<sup>5</sup>"The biggest concern, obviously, is, of course, the tax debt, first of all that it is tax debt. When an applicant is seeking a federal security clearance, failure to pay—well, failure to file tax returns is specifically disqualifying. That has not been shown here, and that's not the issue. But tax debt, you know, when you have tax debt, that's a concern to the government because any taxpayer is expected to comply with the [law] . . . But the tax debt remains an issue here, and I think [Applicant] has not really prioritized his expenses in a proper way . . . [T]he tax debt is really the biggest concern. Tr. at 86-87.