

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge noted that a debt arising from Applicant’s divorce was the only one alleged in the SOR, and that he had taken steps to ensure that it is paid off. The Judge concluded that Applicant has no other outstanding debts, lives within his means, and has reduced or eliminated any vulnerability to exploitation that might otherwise have arisen from his debt. The Judge’s conclusions are sustainable. Favorable decision affirmed.

CASE NO: 10-03301.a1

DATE: 06/07/2012

DATE: June 7, 2012

In Re:	)	
	)	
-----	)	ISCR Case No. 10-03301
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Braden Murphy, Esq., Department Counsel

**FOR APPLICANT**

W. Jamiel Allen, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 23, 2011, DOHA 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 February 29, 2012, after the hearing, Administrative Judge Mary E. Henry 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 issues on appeal: whether the Judge erred in her application of the mitigating conditions and whether the Judge's whole-person analysis was erroneous. Consistent with the following, we affirm the Judge's decision.

The Judge found that Applicant and his wife divorced in 2008. The divorce decree required Applicant to pay his ex-wife \$6,320 plus an additional \$4,702 for attorney fees. Applicant did not make these required payments, believing that he had paid her enough during their marriage. For example, he had given her \$20,000 from his retirement account for start-up costs for a business. Eventually, Applicant's wife got a court order directing that he make the payments. During the processing of his security clearance application he stated that he did not intend to pay his wife the monies owed as a consequence of their divorce. After receiving the SOR, Applicant hired an attorney. After some effort, he was able to get in touch with Applicant's ex-wife, asking for a meeting to discuss payment options. She refused.

Over the next several weeks, Applicant and his attorney worked with Applicant's bank to set up a money transfer. Applicant's attorney kept in regular e-mail contact with the ex-wife. Less than a month prior to the hearing, the attorney wrote Applicant's wife to advise her on the steps she needed to take to ensure that Applicant's money could be deposited in her account. She did not respond. In early January 2012 he contacted her again, and she provided the requested information. Applicant deposited \$400 in her account in early January 2012 and another \$200 later on that month. He set up an automatic transfer from his bank to his ex-wife's account. He is not past due on other accounts, although he has enrolled in a debt management program. He has enough income to make the payments to his wife's account. Applicant has acknowledged that his failure to pay the court-ordered debt was a bad decision.

In the Analysis, the Judge noted that the debt arising from Applicant's divorce was the only one alleged in the SOR and that he had taken steps to ensure that it is paid off. She stated that he has no other outstanding debts, and he lives within his means. She concluded that, by acknowledging his mistake and taking steps to correct it, Applicant has reduced or eliminated any vulnerability to exploitation that might otherwise have arisen from his debt.

We note the Judge's findings, and other record evidence, as follows: (1) Applicant's SOR alleged only one delinquent debt; (2) he has set up an automatic payment plan to discharge this debt; (3) his financial condition is stable and he is paying his other debts as they arise; and (4) Applicant's attorney encountered difficulty in communicating with Applicant's ex-wife. Additionally, we also note record evidence that, during the time between Applicant's divorce and the corrective actions described above, Applicant was deployed in support of U.S. interests in the Middle East, on one occasion for nearly six months.

After considering the record as a whole, we conclude that the findings and evidence cited above support a favorable whole-person conclusion. The Judge's decision is supportable on this

record. We do not have to agree with a Judge's decision to find it sustainable. *See, e.g.*, ISCR Case No. 09-02281 at 3 (App. Bd. Apr. 18, 2011).

**Order**

The Judge's favorable security clearance determination is AFFIRMED.

Signed: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board

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