

KEYWORD: Guideline F

DIGEST: The Judge concluded that Applicant evidenced poor judgment when he left his job of 17 years and elected to tap his personal credit in trading stock options. The Judge also concluded that Applicant and his wife had a history of living beyond their means. These conclusions are supported by the record. Adverse decision affirmed.

CASENO: 10-04808.a1

DATE: 06/15/2012

DATE: June 15, 2012

In Re:	)	
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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 Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 19, 2011, DOHA 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 April 3, 2012, after the hearing, Administrative Judge Elizabeth M. Matchinski 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 the Judge erred in her findings of fact; whether the Judge failed to consider all of the record evidence; and whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant served in the U.S. military from 1984 until 1991 as a graphic artist. He held a security clearance in the military, beginning in 1988. After leaving the military, he did freelance illustration work and eventually was hired as an illustrator for a private company.

Applicant is married and has two sons. In 2008, he resigned his job in order to care for his sons after school. Applicant's wife's job had greater opportunities for advancement and a higher salary. Applicant believed he could earn about \$50,000 annually as a freelance illustrator. Applicant had an on-line brokerage account for trading in stock options. After leaving his job, he closed his 401(k) account and transferred the funds into his brokerage account.

Applicant's illustration work declined due to the economic downturn in the late 2000s. He began to trade stock options as a means of generating income. Some months this activity was sufficiently remunerative to enable him to pay his expenses. In others he had to use personal credit to do so. By late 2008, on-line trading was his only source of income. He began to tap unused credit in order to fund his trading. As time progressed, he was unable to make enough from trading to cover his increasing debt. He began falling behind in payments to his credit card lenders. By the fall of 2009, he owed over \$147,000 on his credit card accounts. His spouse incurred credit card debt of her own in an effort to pay household expenses. By May 2010, his credit accounts alleged in the SOR had been charged off, in the amount of \$159,599. In addition, he owed significant amounts on four other credit accounts, on which he had been making payments.

Some time in 2010, Applicant engaged in settlement negotiations and/or made payments on his debts. However, in the summer of 2011, his truck developed engine trouble, and he borrowed money from his father-in-law to make repairs. In repaying this loan, he neglected his other debts. His efforts to resolve his debts were delayed due to the death of his brother while staying at Applicant's house. However, in February 2012 Applicant entered into a debt repayment program covering the debts alleged in the SOR as well as two others. He made his first payment that month. The program requires financial counseling as a term of participation. Applicant has no active credit accounts and no retirement assets for use in debt resolution. Applicant enjoys a good reputation for his work performance.

In the Analysis, the Judge noted that Applicant had been negotiating with lenders and was making payments until the summer of 2011. She also noted that the poor economy had effected Applicant's financial condition, a circumstance outside Applicant's control. However, she concluded that his decision to leave his job of 17 years and to tap his personal credit in trading stock options were his own decisions, well within his control and which evidenced poor judgment. She

cited his new debt consolidation plan, but she stated that the one payment he had made by the close of the record was not sufficient to demonstrate a track record of debt resolution. She also cited to evidence that Applicant's wife also has a heavy burden of credit card debt, suggesting that the couple has a history of living beyond their means. Accordingly, she concluded that neither the mitigating conditions nor a whole-person analysis would support a conclusion that the security concerns arising from Applicant's financial delinquencies have been mitigated in full.

Applicant contends that the Judge found that he had begun debt repayment only in 2011. He contends that it was a year earlier. He argues that this alleged error is significant, because it demonstrates that the Judge did not give sufficient consideration to the full extent of his debt repayment efforts. We examine a Judge's findings to see if they are supported by substantial record evidence, which is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." Directive ¶ E3.1.32.1. *See* ISCR Case No. 11-0970 at 2 (App. Bd. Feb. 28, 2012). The challenged statement by the Judge is found in her whole-person analysis. She made the statement in explaining her conclusion that Applicant had not demonstrated a track record of debt repayment. However, as noted above, her findings describe in considerable detail the origin of Applicant's financial problems and his efforts prior to 2011 to come to terms with his creditors. She made significant findings about Applicant's negotiations with creditors in 2010. Applicant has not demonstrated that the Judge erred in her findings about the timing of his efforts at debt resolution.

Applicant also argues that the Judge did not consider all of the record evidence. He contends that she did not consider the extent to which he attempted to resolve his debts well prior to 2011 and that this failure resulted in her adverse decision. A Judge is presumed to have considered all of the record evidence. *See, e.g.*, ISCR Case No. 10-09281 at 3 (App. Bd. Mar. 5, 2012). As stated above, the Judge made extensive findings about all aspects of Applicant's financial circumstances, including the steps he took prior to 2011 to address his debts. Her adverse decision appears to be founded on her conclusion that Applicant's problems originated with his poor judgment in leaving his job of 17 years and in funding his stock option trading with personal credit. She also relied on evidence of his wife's debt problems as at least a contributing factor in Applicant's difficulties. Applicant has not rebutted the presumption that the Judge considered all of the record evidence.

Regarding mitigation, the Judge's findings about Applicant's efforts at debt resolution in 2010 and 2011 demonstrate that these efforts were frequently interrupted, for example by the problem with his truck and that they were not particularly successful. By comparison, Applicant's evidence concerning the current plan suggests that it holds out a promise of eventual success. However, it came about only recently, after DOHA had issued the SOR in Applicant's case, and about a month prior to the hearing. The extent to which an applicant's most significant and sustained effort to address bad debt occurred after the issuance of an SOR is a matter that a Judge can legitimately consider in evaluating the applicant's case for mitigation. *See, e.g.*, ISCR Case No. 08-06058 at 6 (App. Bd. Sep. 21, 2009) (The timing of an applicant's conduct affects the extent to which that conduct satisfies the mitigating conditions). The Judge's treatment of Applicant's evidence concerning debt resolution is consistent with the record that was before her. To the extent that he is arguing that she should have given greater weight to his conduct in 2010 and 2011, we find no reason to believe that the Judge's weighing of the evidence was in error.

The record supports a conclusion 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,’” both as to the mitigating conditions and the whole-person factors. *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 Judge’s adverse decision is sustainable on this record. “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). 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 Judge’s adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra’anan

Michael Y. Ra’anan  
Administrative Judge  
Chairperson, 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