

KEYWORD: Guideline F

DIGEST: Because Applicant had admitted the allegations in the SOR, the Government had no burden of production. The Directive presumes a nexus between admitted or proved conduct and an applicant's security worthiness. An adverse decision does not necessarily mean that the applicant will engage in criminal conduct. Rather, it is an examination of circumstances that raise concerns about the applicant's judgment and reliability. Applicant failed to rebut the presumption that the Judge was unbiased. Applicant failed to make a prima facie showing that he had submitted evidence that did not make it into the record. Applicant failed to rebut the presumption that the Judge considered all of the evidence in the record. Adverse decision affirmed.

CASE NO: 13-00987.a1

DATE: 08/14/2014

DATE: August 14, 2014

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 Department of Defense (DoD) declined to grant Applicant a security clearance. On October 24, 2013, 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 decision on the written record. On June 12, 2014, after considering the record, Defense Office of Hearings

and Appeals (DOHA) Administrative Judge Paul J. Mason 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 was biased against him; whether Applicant was denied due process; whether the Judge erred in concluding that Applicant's circumstances raised security concerns; whether the Judge erred in his application of the pertinent mitigating conditions; whether the Judge's whole-person analysis was erroneous; and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law.<sup>1</sup> Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Applicant served in the U.S. military, during which time he received several awards and citations. After his discharge, he received an associate's degree. He has completed the requirements for a bachelor's degree, but he has not received his diploma because he has not paid his final semester's tuition. While attending school, he worked as a bartender. He received a security clearance in 1999 and again in 2011. His disciplinary record is clean.

Applicant has numerous delinquent debts, for credit cards, student loans, a repossessed automobile, etc. He has attributed his problems to a dramatic diminution in pay while he was attending school, the economic downturn of recent years, the poor housing market, etc. He filed a federal consolidation loan and promissory note to consolidate his student loans. He has hired a law firm to assist him in resolving his problems. He advised that he had used all of his savings and retirement accounts to finance his education and his living expenses. He stated that he intended to establish payment plans as soon as an anticipated overseas assignment comes to pass.

Applicant enjoys a good reputation for his academic attainments, his military service, and his professionalism. He has received certificates of training in such areas as diplomatic security, anti-terrorist driving, and "blue print" reading.

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

The Judge cleared Applicant of more than half of the allegations in the SOR. However, for the remainder of the allegations, involving more than \$33,000 in delinquent debt, the Judge found that Applicant had failed to meet his burden of persuasion. He stated that Applicant's decision to take on substantial student loan debt during an economic downturn was due to his own choice rather than something beyond his control.<sup>2</sup> He further stated that Applicant had not corroborated claims

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<sup>1</sup>While this case was pending before us, Applicant submitted an additional letter that we construe as a request to expedite the decision in his case.

<sup>2</sup>Directive, Enclosure 2 ¶ 20(b): "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances[.]"

of debt resolution.<sup>3</sup> The Judge found no evidence of financial counseling, insofar as the law firm Applicant had hired merely provided advice on how to read a credit report.<sup>4</sup> He also concluded that Applicant had not demonstrated a plan to resolve his debts, accompanied by purposeful action to implement the plan.<sup>5</sup> In the whole-person analysis, the Judge cited to the favorable evidence Applicant submitted regarding his military service, his professionalism, and his academic qualifications. The Judge also noted that Applicant has no history of criminal infractions or problems with drugs or alcohol. The Judge cited to evidence that Applicant had received forgiveness of a home equity loan, although this debt was not alleged in the SOR. However, the Judge stated that there is a paucity of evidence substantiating resolution of the debts forming the basis of the adverse decision.

## Discussion

Applicant contends that the Judge erred in concluding that his circumstances raised security concerns 19(a) and (c).<sup>6</sup> He cites to his efforts at debt resolution in support of his argument. Whenever an applicant denies an allegation in an SOR, the Government has the burden of producing substantial evidence of the facts supporting the allegation. *See, e.g.*, ISCR Case No. 11-06925 at 4 (App. Bd. Dec. 13, 2013).

Applicant admitted all of the allegations in the SOR. Therefore, the Government bore no burden of production. Nevertheless, the Government presented evidence in the form of credit reports, which are often sufficient in and of themselves to constitute substantial evidence of Guideline F concerns. *See, e.g.*, ISCR Case No. 11-12204 at 3 (App. Bd. Jul. 11, 2013). The Government also presented Applicant's SCA, which contained significant information about his debts problems, his response to the SOR, and his response to the File of Relevant Material. These documents, considered in their totality, constitute substantial evidence in support of the allegations. Moreover, the Directive presumes a nexus between admitted or proven conduct under any of the Guidelines and an applicant's security worthiness. *See, e.g.*, ISCR Case No. 10-00925 at 3 (App. Bd. Jun. 26, 2012). Applicant's argument on appeal is not sufficient to rebut the presumption of nexus. We find no reason to disturb the Judge's conclusion that Applicant's circumstances raised security concerns.

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<sup>3</sup>Directive, Enclosure 2 ¶ 20(d): "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]"

<sup>4</sup>Directive, Enclosure 2 ¶ 20(c): "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control[.]"

<sup>5</sup>*See, e.g.*, ISCR Case No. 09-08462 at 3 (App. Bd. May 31, 2011): An applicant must "act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan."

<sup>6</sup>Directive, Enclosure 2 ¶ 19(a): "inability or unwillingness to satisfy debts[.]" Directive, Enclosure 2 ¶ 19(c): "a history of not meeting financial obligations[.]"

Applicant points to the Judge's finding that his criminal record is clean. He argues that he will not commit crimes or otherwise engage in dishonest behavior and, therefore, should have a clearance. We note, first of all, that a clearance adjudication is not about an applicant's loyalty. Directive, Enclosure 1, SECTION 7. Moreover, an adverse clearance decision is not necessarily a determination that the applicant will engage in criminal conduct. Rather, it entails an examination of any circumstances, in the case of Guideline F financial ones, that raise concerns over the applicant's judgment and reliability. Poor judgment is cited by the Directive as a factor that can raise questions about the applicant's ability to protect classified information. Directive, Enclosure 2 ¶ 18. This is the context in which the Judge analyzed Applicant's security concerns. He did not conclude that Applicant was likely to commit crimes but, rather, that Applicant's failure responsibly to address his debts raises a reasonable concern that he may be lacking in those traits essential to the protection of national secrets. We find no error in the Judge's analysis.

Applicant contends that the Judge was biased against him. However, his argument is not sufficient to meet his "heavy burden of persuasion" on this issue. *See, e.g.*, ISCR Case No. 08-01306 at 4 (App. Bd. Oct. 28, 2009). There is nothing in the record that would persuade a reasonable person that the Judge lacked the requisite impartiality. Applicant has cited to a Hearing Office case that, he argues, supports his effort to get a clearance. Hearing Office cases are binding neither on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 13-00464 at 3 (App. Bd. Feb. 20, 2014). We give this case due consideration. However, it is not sufficient to undermine the Judge's decision. Applicant has submitted evidence not contained in the record, which we cannot consider. Directive ¶ E3.1.29.

Applicant argues that he submitted evidence that did not make it into the record, and he claims that the Judge acknowledged as much. Applicant has not provided any corroboration for this assertion, and the record does not support it. The Judge's comment was simply that Applicant had not substantiated his claims of debt resolution. Moreover, the Judge made findings about the things Applicant has cited in making this particular argument, for example his student loan consolidation plan. Applicant has not made a proffer sufficient to support a reasonable inference that he actually submitted additional evidence within the requisite period of time. *See, e.g.*, ISCR Case No. 11-07169 at 2 (App. Bd. Nov. 18, 2013). Applicant was not denied the due process afforded by the Directive.<sup>7</sup>

Applicant cites to his favorable evidence, such as his good security record, his resolution of certain debts, etc. Concerning his prior experience holding a clearance, it is foreseeable that even a person with a prior good record could experience circumstances that raise doubt about his future judgment. Applicant's argument is not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-13626 at 3-4 (App. Bd. Nov. 7, 2013). Neither is it sufficient to demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law.

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<sup>7</sup>Applicant contends that he was not advised about 18 U.S.C. § 1001, as required by Directive ¶ E3.1.18. However, this paragraph refers to a hearing, not to a decision on the record. Moreover, the Judge did not find that Applicant intentionally provided false information. We find no merit in Applicant's argument.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision, regarding both the mitigating conditions and the whole-person factors. The 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 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