

KEYWORD: Guideline F

DIGEST: Failure to discharge a debt is a continuing course of conduct. Therefore, it can fairly be described as a “history” of not paying debt. Disagreement with a Judge’s weighing of evidence is not enough to show that the Judge erred. Adverse decision affirmed.

CASE NO: 14-00234.a1

DATE: 04/06/2015

DATE: April 6, 2015

In Re:)	
)	
-----)	ISCR Case No. 14-00234
)	
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 March 14, 2014, 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 January 16, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mary E. Henry denied Applicant’s request for a security clearance. Applicant 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 security clearance decision.

The Judge made the following findings of fact: Applicant is 44 years old. Applicant currently earns \$9,812 a month in gross income plus overtime pay. His net monthly income is approximately \$6,100, and his total monthly expenses are approximately \$5,000. In 1999, Applicant purchased a house for approximately \$265,000. Over the next few years, Applicant refinanced the property a number of times. Some of the money he received through refinancing was invested in a bank which later failed. Applicant eventually owed on a mortgage and a home-equity loan. At one point, Applicant wished to combine these two entities into one monthly payment. He learned that if he wished to modify his mortgage and home-equity loans, he needed to stop paying the loans. He decided to do this as a negotiating tactic in early 2009. At this time, he was experiencing financial problems as a result of heavy job-related travel expenses combined with his employer's failure to timely reimburse him for those expenses. Applicant moved his family to a rental home. In August 2009, his mortgage lender approached Applicant about a loan modification which would combine his two outstanding loans on the house that he owned. The lender placed him on a three-month trial payment plan for \$2,300 per month.

Applicant made the first two payments under the trial plan. He decided not to pay the third payment and to allow the house to go into foreclosure. In making this decision, he weighed the cost of moving back into his home against the cost of breaking his lease on the rental property and the impact on his family. The house sold at foreclosure, leaving a balance of approximately \$20,000 on the original mortgage. Under his state's anti-deficiency law, Applicant does not owe any money on this mortgage. The mortgage lender filed a lawsuit against Applicant seeking to recover on the home-equity loan. Applicant did not defend the lawsuit, which resulted in a default judgment against him in the amount of \$190,000. This occurred in 2012. Since then, after the lender's attorney filed for a garnishment on his bank accounts, Applicant has been working through an attorney to settle the judgment. At the hearing, Applicant stated he would make a cash offer between \$20,000 and \$40,000 plus a monthly payment of \$800 to \$1,200 per month for two years. Applicant acknowledged that he made poor decisions related to the mortgages. He has not received financial counseling. Outside of the two mortgage debts, Applicant pays his bills in a timely manner and has not defaulted on any other debts.

The Judge reached the following conclusions: Applicant experienced problems with his employer reimbursing his travel expenses, which created increased costs for him on his credit cards. Other than this, Applicant has provided no evidence by his testimony or documents which indicates that circumstances beyond his control created a problem with his ability to pay his mortgages when he defaulted on the mortgages in 2009. He had the financial resources to continue the mortgage payments and accept a reasonable modified loan agreement. He failed to defend the civil suit filed on the home-equity loan, and he made no effort to pay or negotiate a settlement of the resulting judgment until the mortgage lender filed a garnishment of his bank accounts. None of the financial considerations mitigating conditions apply. His actions concerning the two mortgages reflect poor

judgment and show a lack of responsibility, which raises a security concern about his handling of classified information.

Applicant disputes the Judge's conclusion that Guideline F Disqualifying Condition ¶ 19(c)¹ applies to the case. He argues that the debt from the house in 2009 is a single issue and does not constitute a "history." Applicant's argument is without merit. The record indicates that the debt arose in 2009 and has yet to be resolved. The Board has long held that a failure to discharge a debt is a continuing course of conduct. *See, e.g.*, ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008); ISCR Case No. 01-03695 at 3-4 (App. Bd. Oct. 16, 2002). Thus, the Judge's characterization of Applicant's delinquent debt issue as a "history" was not error.

Applicant asserts that his financial difficulties were caused by circumstances beyond his control and argues that the Judge should have mitigated the case on that basis. He specifically cites the Judge's conclusion that "he had the financial resources to continue the [mortgage] payments and accept a reasonable modified loan agreement," and states that it is incorrect. Applicant has failed to establish error on the part of the Judge.

The Judge recognized the financial difficulties that Applicant was experiencing and mentioned them in her decision. These findings, however, do not mandate an overall favorable decision. 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 Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is 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).

Applicant's appeal brief essentially argues for an alternate interpretation of the record evidence.

The Board does not review a case *de novo*. 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.

¹"[A] history of not meeting financial obligations."

Order

The decision of the Judge 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