

KEYWORD: Guideline F

DIGEST: Mitigation under Guideline F does not require payment of all debts. It does require that the applicant remove concerns about his or her reliability and trustworthiness raised by those debts. Applicant has demonstrated a track record of debt resolution, thereby showing the degree of reliability and trustworthiness contemplated by Guideline F, despite a lack of corroborating evidence regarding the disposition of two remaining SOR debts. The Judge's adverse findings are not sustainable. Adverse decision reversed.

CASENO: 14-00504.a1

DATE: 08/04/2014

DATE: August 4, 2014

In Re:)	
)	
-----)	ISCR Case No. 14-00504
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Corey Williams, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 11, 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 decision

on the written record. On May 30, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr., denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we reverse.

The Judge's Findings of Fact

Applicant is a retired member of the U.S. military and seeks renewal of a clearance she held on active duty. She has worked for a Defense contractor since early 2010. She became a widow in March 2011.

The SOR alleges four delinquent credit card debts. Applicant attributes her financial problems to her difficulty in finding a good-paying job after graduating from college, caring for her aging mother, and other unspecified unforeseen circumstances.

Applicant entered into an agreement with a credit counseling company in order to resolve her delinquent debts. She paid off two of the debts alleged in the SOR (worth about \$13,000), and she paid two other debts that were not alleged. However, she submitted no corroborating evidence as to the resolution or status of the remaining two debts.

Applicant provided no character references or employment records. Her credit reports show a large number of accounts that were delinquent but which are current or have been closed with a zero balance.

The Judge's Analysis

The Judge stated that, if Applicant's circumstances were as she claimed them to be, the security concerns in her case would be mitigated. He stated that her problems appear to be receding, that her financial problems were affected by circumstances outside her control, "and she might reasonably claim to have been responsible in addressing many debts not alleged in the SOR since then, as well as the two SOR debts she resolved." Decision at 4. He noted that Applicant had received credit counseling. He also stated that her resolution of the two SOR debts plus two others demonstrates a good-faith effort to pay off her debts. However, because she did not corroborate the status of the remaining two SOR debts, he concluded that she had failed to meet her burden of persuasion as to mitigation.

Discussion

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those

concerns. See Directive ¶ E3.1.15. “The application of disqualifying and mitigating conditions and whole person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole.” See, e.g., ISCR Case No. 05-03635 at 3 (App. Bd. Dec. 20, 2006).

The standard applicable in security clearance decisions “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). “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

In deciding whether the Judge's rulings or conclusions are erroneous, the Board will review the Judge's decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. See ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Applicant challenges the Judge's conclusion that she had not demonstrated mitigation of the concerns raised by the SOR allegations. She cites to evidence that her debts arose from circumstances outside her control, such as expenses associated with caring for her mother, loss of her husband, and her difficulty in finding employment. She also cites to evidence of her agreement with the credit counseling company and the attendant debt resolution. She argues that she has shown responsible action in regard to her debts and that her debts are being resolved.

A meaningful track record of debt reform includes evidence that debts have actually been paid off or resolved. However, an applicant is not required to show that every debt in the SOR has been paid. Rather, an applicant is required to demonstrate that he or she has “established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan.” ISCR Case No. 07-06482 at 2 (App. Bd. May 21, 2008). A Judge should consider the entirety of an applicant's financial circumstances in deciding whether his or her plan for debt reduction is credible. There is no requirement that a plan provide for payments on all outstanding debts simultaneously.

Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time . . . Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.
Id. a 2-3.

In short, mitigation under Guideline F does not require payment of all debts. It does require that the applicant remove concerns about his or her reliability and trustworthiness raised by those debts.

In the case before us, we note the Judge's conclusion that Applicant's problems were affected by circumstances outside her control and that she could reasonably claim to have engaged in responsible action. This conclusion is consistent with the record that was before him. This record

includes evidence that Applicant has entered into a credit counseling plan, has paid off four of the six debts addressed by the plan, and has resolved many other delinquent debts not alleged in the SOR. Applicant has resolved about \$13,000 of the SOR debts—more than half the total indebtedness cited by the DoD. Under the facts of this case, Applicant has demonstrated a track record of debt resolution, thereby showing the degree of reliability and trustworthiness contemplated by Guideline F, despite a lack of corroborating evidence regarding the disposition of the two remaining SOR debts.

Each case must be decided on its own merits. In the one before us, we conclude that the Judge's adverse findings are not sustainable.

Order

The Decision is **Reversed**.

Signed: Michael Ra'anan

Michael 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