

KEYWORD: Guideline F

DIGEST: The Judge’s material findings are supported by substantial evidence. Applicant has not rebutted the presumption that the Judge considered all of the evidence. Reliance on the non-collectability of a debt does not constitute a good faith effort to pay debts. Debts belonging to a business may have a bearing on an applicant’s judgment and reliability. The Judge’s whole-person analysis considered Applicant’s security concerns in light of the entire record. Adverse decision affirmed.

CASE NO: 14-01231.a1

DATE: 02/10/2015

DATE: February 10, 2015

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 May 13, 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 November 7, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson 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's findings of fact contained errors; whether the Judge's whole-person analysis was erroneous; and whether the Judge's adverse decision as arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision

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

Applicant seeks a security clearance in connection with his employment. He began working for a Defense contractor in the early 1980s and later developed his own company to do business with the Government. Applicant started up another company and later merged the two. In the mid-2000s, Applicant's company lost its contract and became a subcontractor for another one. A year later, the parent company told Applicant that he was being paid too much, and Applicant agreed to become an employee rather than a subcontractor. After taking the job, Applicant went on a pre-planned vacation, against his employer's wishes. Two days after returning, Applicant was fired and not given a reason. Applicant was unemployed for most of 2008.

Applicant signed a lease-purchase agreement to sell his primary residence. The renter/buyer left town without notice, leaving the house in shambles. Applicant lost his homeowners insurance. The lender double-charged him for "forced-place" insurance, and the house eventually went into foreclosure.

Applicant went into a business venture, taking a bank's advice to finance it with a credit card secured by insurance. However, Applicant had a falling-out with his partners, was locked out of the building, and could not continue. Applicant's bank informed him that this was not considered a business interruption. Therefore, the bank denied insurance coverage to him.

Applicant was not able to keep up with both his business and his personal debts, and he defaulted on his business credit cards. The bank levied his personal checking and savings accounts and sold a majority of his debt to collection agencies.

Applicant contended that he was not legally responsible for debt incurred by his company, insofar as he did not guarantee any of the loans taken out in its name. However, credit reports show each of the SOR debts to be owed by Applicant. The Judge noted that litigation is still pending regarding Applicant's finances, so neither Applicant nor his counsel could identify with specificity which debts were personal to Applicant and which were not. She stated that she would consider the debts in dispute to be owed by Applicant.

The Judge resolved some of the SOR debts in Applicant's favor. However, she entered adverse findings regarding six of them. Three of these were owed to a bank, in amounts of \$40,397, \$8,726, and \$7,070 respectively. Applicant contended that the first two had been forgiven by the bank and that he did not owe any taxes because he was insolvent. He supported these contentions with an IRS Form 1099-C and with a letter from an accountant. Applicant claims that the third bank debt is in his wife's name. He claims that two of the debts—\$811 and \$13,534—were incurred by his company and, therefore, were not his. Although he disputes these debts, Applicant states that, if he

is found personally liable, he will pay them. The final debt found against Applicant is \$14,987 owed to an insurance company. Applicant has been sued by the creditor, and litigation was ongoing as of the close of the record.

Applicant has a remainder of \$284 after paying his monthly expenses. He has sought out investment and financial counseling. He is paying his current bills and is current with his active credit cards. Applicant enjoys an excellent reputation for professionalism, honesty, intelligence, integrity, and dependability. He is highly recommended for a security clearance.

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

In evaluating Applicant's case for mitigation, the Judge noted circumstances outside his control, such as unemployment, which affected his financial condition. However, she also found that his problems were due to poor decisions, such as using credit cards to pay living expenses. She noted Applicant's testimony that he does not owe taxes on his forgiven debts due simply to his insolvency. She stated that, even if the disputes over some of Applicant's debts were to be resolved, he lacks the means to pay them. The Judge concluded that Applicant's finances were in disarray and that Applicant did not have a concrete understanding of his responsibilities regarding them. She stated that he had not demonstrated a good-faith effort to resolve his debts.

### **Discussion**

Applicant challenges some of the Judge's findings. He cites to his evidence that two of the debts had been forgiven and that two of them were business debts. He also claims that the Judge had no basis to conclude that he owed the insurance debt or the one in his wife's name. These arguments appear really to challenge the extent to which the Judge considered the evidence, however, rather than her actual findings. Indeed, she made findings that were generally consistent with the matters that Applicant has asserted on appeal. Applicant's argument that the Judge did not consider the evidence that he has cited is not sufficient to rebut the presumption that the Judge considered all of the evidence. *See, e.g.*, ISCR Case No. 11-10255 at 4 (App. Bd. Jul. 28, 2014). The Judge's material findings of security concern are supported by substantial record evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). To the extent that the findings contain errors, they did not likely exert an affect on the outcome of the case. Therefore, any errors in the findings are harmless. To the extent that Applicant is relying on extinguishment of a debt, he misunderstands the scope of the concern under Guideline F. *See, e.g.*, ISCR Case No. 10-03656 at 3 (App. Bd. Jan. 19, 2011) ("Security clearance decisions are not controlled or limited by any statute of limitation, and reliance on the non-collectability of a debt does not constitute a good-faith effort to resolve that debt within the meaning of the Directive" [internal citations omitted]).

Applicant challenge the Judge's whole-person analysis. He cites to his having held a clearance for many years without incident or concern. He notes evidence that he pays his current debts, arguing that this demonstrates that his security-significant conduct is behind him. He asserts that the only debt remaining is the debt to the insurance company, which he characterizes as

“questionable.” Appeal Brief at 9. As stated above, the Judge is presumed to have considered all of the evidence in the record. In arguing this assignment of error, Applicant states that he has resolved almost all of his debts. However, assuming without deciding that he has resolved more of his debts than the Judge found to be the case, a Judge should consider not only the extent to which debts have been paid but also the circumstances underlying those debts that impugn an applicant’s good judgment. *See, e.g.*, ISCR Case No. 11-14723 at 3 (App. Bd. Oct. 3, 2014). Moreover, even debts that belong to a business may have a bearing on the judgment and reliability of company officials who incurred them. *See, e.g.*, ISCR Case No. 93-1096 at 4 (App. Bd. Mar. 7, 1995) for the proposition that business-related debts can raise Guideline F security concerns. The Judge’s conclusion that Applicant’s financial problems resulted from Applicant’s choices that showed questionable judgment is supportable. We find no reason to disturb the Judge’s whole-person analysis. *See ISCR Case No. 12-03077 at 2-3 (App. Bd. May 13, 2013) (A Judge’s whole person analysis must consider the totality of an applicant’s conduct in reaching his or her decision).*

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. 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: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge

Member, Appeal Board