

KEYWORD: Guideline F

DIGEST: A notation that a debt was removed in a credit report without further explanation does not establish the reason why that action was taken. Applicant's credit reports do not establish that he dealt with creditors in a responsible manner. The Judge's material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. A Judge is precluded from raising security concerns outside the scope of the SOR without amending the SOR and giving the parties a reasonable time in which to prepare to address the amendment. However, conduct not alleged or otherwise fairly embraced by the SOR may be relevant for other purposes such as evaluating an applicant's credibility, rehabilitation, or case in mitigation. There is no basis for concluding that the Judge considered matters not alleged in the SOR for an improper purpose. Adverse decision affirmed.

CASENO: 14-03475.a1

DATE: 06/15/2016

DATE: June 15, 2016

In Re:)
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 -----) ISCR Case No. 14-03475
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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 February 4, 2015, 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 March 23, 2016, after the hearing, 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant is a 33-year-old employee of a defense contractor. He served in the military for over seven years, including two tours in hostile-fire zones, and received an honorable discharge. After leaving the military, he was unemployed for about six months before obtaining his current job in 2007. He works two full-time jobs and earns a total of about \$142,000 annually. He divorced in April 2006, married again in September 2006, and separated from his second wife in August 2013.

Applicant had ten delinquent debts totaling about \$35,000. In his answer to the SOR, he asserted all the debts were either paid or removed from his credit report. He provided documentation showing two debts (SOR ¶¶ 1.b and 1.d) were resolved, but no documentation showing resolution of the other debts.

Applicant hired a law firm that specialized in contesting entries on credit reports. Between January 2014 and February 2015, he succeeded in having 24 accounts removed from his credit reports. The removed accounts correspond roughly to the creditors alleged in the SOR. An August 2015 credit report showed many accounts closed, but also showed new accounts in collection. A footnote in the decision reflects that the August 2015 credit report does not provide much clarity to Applicant’s current financial situation because he did not print account details that were available for each account. In the footnote, the Judge also stated, “I cannot tell if the accounts were closed because they were paid or otherwise resolved, then aged off, or simply aged off.” Decision at not n. 5.

The Judge’s Analysis

The Judge found for Applicant on SOR ¶¶ 1.b and 1.d and against him on the remaining allegations. The Judge noted that Applicant had delinquent debts dating back to at least 2006 and had

not documented any action on them, except perhaps having them removed from his credit report for reasons that could range from satisfaction of the debt to simple expiration of the seven-year reporting period. The Judge concluded that, even though Applicant's period of unemployment and child support issues resulting from his divorce and separation were conditions beyond his control, he had not documented that he dealt with his debts in a responsible manner. The Judge noted the successful challenge of the contents of a credit report does not establish that Applicant dealt responsibly with his creditors, had any contact with them for several years, or engaged in good-faith efforts to resolve his debts.

Discussion

Applicant argues that the Judge should have found his security concerns mitigated. He points out that all of the debts were removed from his credit report and disputes the Judge's finding that the evidence is unclear as to how the debts were resolved and that some of the debts may have "aged off" his credit report. He claimed the debts would not have aged off his credit report until late 2015 or 2016. The Board, however, has previously noted that a credit report may not be sufficient to meet an applicant's burden of persuasion as to mitigation because it may provide little evidence regarding the underlying circumstances of the debt. The fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. *See, e.g.*, ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015). Likewise, the mere notation that a debt was "removed" in a credit report without any further explanation does not establish the underlying reason for why that action was taken. Applicant's credit reports do not establish that he dealt with his creditors in a responsible manner. After reviewing the record, the Board concludes that the Judge's material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Considering the record evidence as a whole, the Judge's material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant also claimed that the Judge considered collection accounts not alleged in the SOR in denying his security clearance. A Judge is precluded from raising security concerns outside the scope of the SOR without amending the SOR and giving the parties a reasonable time in which to prepare to address the amendment. However, conduct not alleged or otherwise fairly embraced by the SOR may be relevant for other purposes such as evaluating an applicant's credibility, rehabilitation, or case in mitigation. *See, e.g.*, ISCR Case No. 14-00151 at n. 1 (App. Bd. Sep. 12, 2014). From a review of the record, there is no basis for concluding that the Judge considered matters not alleged in the SOR for an improper purpose.

Applicant further contends that the Judge may have denied his security clearance because he did not express himself clearly at the hearing. However, having decided to represent himself during the proceedings below, Applicant cannot fairly complain about the quality of his self-representation or seek to be relieved of the consequences of his decision to represent himself. ISCR Case No. 11-08118 at 2-3 (App. Bd. Aug. 12, 2013).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. Applicant has not identified any harmful error likely to change the outcome of the case. 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 F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board