

KEYWORD: Guideline F; Guideline E

DIGEST: We cannot consider new evidence on appeal. Judges can consider non-alleged conduct on such issues as mitigation, credibility determinations, etc. Promises to pay off debts in the future are not a substitute for a track record of debt resolution. The effect that an adverse decision may have on an applicant is not relevant. Adverse decision affirmed.

CASE NO: 14-03497.a1

DATE: 03/09/2015

DATE: March 9, 2015

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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 August 18, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On January 9, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman 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 affirm.<sup>1</sup>

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

Applicant has been employed by a Defense contractor since 2005. He retired from the U.S. military the previous year. He served as an enlisted member, a warrant officer, and a commissioned officer, retiring as a major. He held a security clearance during his military service and during his current employment.

Applicant's SOR alleges several delinquent debts. Of the six debts alleged, the Judge found against Applicant for three—a mortgage loan, a home equity line of credit, and a jewelry store account. Applicant admitted that he spent his money recklessly from 2010 until 2012. While working for the Defense contractor, Applicant has received several promotions and raises, increasing his annual pay to about \$104,000. His performance appraisals rate him as "fully satisfactory." Decision at 5. He enjoys a good reputation for trustworthiness, rule following, and security awareness.

When completing his security clearance application (SCA), Applicant did not disclose his delinquent debts. He testified that, when he completed the SCA, the full scope of his financial problems was not known to him. However, he admitted that he had been late on some of his house payments and did not disclose his delinquent line of credit because he was making payments on it. He had no explanation for his failure to disclose a charged-off credit card account.<sup>2</sup>

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

The Judge concluded that Applicant deliberately omitted information about his delinquent debts from his SCA. He cited to evidence of Applicant's familiarity with the clearance process, the substantial amounts of his past-due house payments, and his having contacted the lender to explore options for addressing this debt. The Judge stated that he found Applicant's claim not to know about the extent of his debts to be implausible. Accordingly, he concluded that Applicant's omissions raised concerns under Guideline E. He also concluded that Applicant's debts raised concerns under Guideline F.

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<sup>1</sup>Applicant's appeal brief states that he did not receive a copy of the hearing transcript. He asserts that he got in touch with the court reporting company as well as the Department Counsel, but as of the date he submitted his brief he did not have a copy. The Directive provides that an applicant is to receive a copy of the transcript, without exhibits, at no cost. Directive ¶ E3.1.24. A representative of the Appeal Board called Applicant and asked if he wanted the Board to stop processing his appeal until he could be furnished with a copy of the transcript. Applicant replied that he did not, requesting that his appeal go forward.

<sup>2</sup>The Judge resolved a Guideline F allegation pertaining to this account in Applicant's favor.

In evaluating Applicant's case for mitigation, the Judge stated that Applicant's financial problems were largely the result of his own irresponsible spending habits and that Applicant had not sought financial counseling. The Judge concluded that Applicant's debts were not incurred under circumstances making them unlikely to recur. Concerning the omissions from the SCA, the Judge stated that they were not minor, were recent, and did not occur under unique circumstances. In the whole-person analysis, the Judge described Applicant's case as "tragic." Decision at 10. He noted evidence that Applicant had served the U.S. with distinction and that he is devoted to his children. However, he stated that Applicant failed to put reasonable limits on his spending. Moreover, he stated that Applicant's experience with holding a clearance should have placed him on notice of the need for candor, but his embarrassment over his finances appears to have prevailed over his better judgment.

### **Discussion**

A considerable portion of Applicant's brief asserts matters that are not contained in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant argues that the record, properly understood, supports his case for a clearance. He notes that the record contains evidence of debts other than the ones alleged in the SOR. He believes that these non-alleged debts weighed too heavily in the Judge's treatment of his case. It is true that the record contains evidence of debts that were not alleged. For example, Government Exhibit 4 is a copy of Applicant's credit report, which has information about many debts other than those referenced in the SOR. It is permissible for DOHA to consider non-alleged conduct and circumstances, however, on such issues as mitigation, rehabilitation, and a whole-person analysis. *See, e.g.*, ISCR Case No. 12-04554 at 2, n. 1 (App. Bd. Jul. 25, 2014). After examining the Judge's decision, we find no reason to believe that he extended undue weight to the non-alleged debts. Applicant's argument on appeal is, to a large extent, a challenge to the Judge's weighing of the evidence. However, an ability to argue for a different interpretation of the record is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-00251 at 4 (App. Bd. Oct. 10, 2014).

Applicant's brief addresses steps that he plans to undertake in resolving his debts. Promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. *See, e.g.*, ISCR Case No. 12-05113 at 5 (App. Bd. Dec. 30, 2014). Applicant states that the loss of his clearance has worked financial hardship on him. We are not permitted to consider the adverse impact that an unfavorable decision may have on an applicant. Such an impact is not a relevant or material consideration in evaluating his security eligibility. *See, e.g.*, ISCR Case No. 11-13180 at 3 (App. Bd. Aug. 21, 2013).

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