

KEYWORD: Guideline F

DIGEST: The concern under Guideline F is not simply that an applicant might be tempted to compromise classified information in order to pay his debts. A Judge should also consider the extent to which an applicant's circumstances cast doubt upon his judgment, self-control, and other characteristics essential to protecting national security information. Adverse decision affirmed.

CASENO: 14-05359.a1

DATE: 05/04/2016

DATE: May 4, 2016

In Re:)
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 -----) ISCR Case No. 14-05359
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 Applicant for Security Clearance)
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)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Thomas Albin, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 18, 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 February 24, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Elizabeth M. Matchinski 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 erred in concluding that his financial circumstances raised security concerns and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant retired from a job in 2004, receiving about \$400,000 in a retirement account. He was not able to find other employment for three years and withdrew from the account in order to pay his living expenses as well as medical bills incurred by his wife for several illnesses. These withdrawals were taxable events, but Applicant underpaid his income taxes, resulting in a tax lien. Applicant experienced other financial problems resulting from his unemployment and his wife’s medical bills, including a delinquent mortgage, a home equity loan for home repairs, credit card debts in collection/charge-off status, etc., all of which were alleged in the SOR. The mortgage delinquencies resulted in a foreclosure action, although Applicant subsequently obtained a loan modification. The Judge also found that Applicant had another credit card debt for about \$20,000 that had been reduced to judgment and that he had not filed his tax returns for 2005 and 2006. These last two things were not alleged in the SOR, but the Judge stated that she was considering them on the issue of mitigation. One of the SOR debts the Judge found not to have been incurred by Applicant, but by his son.

The Judge found that Applicant had secured an IRS agreement for an offer in compromise for his tax debt and that he had paid off a small medical debt. In addition, the creditor for one of the credit cards began garnishing his wages. In 2011, he established a payment plan of \$150 a month for a \$30,000 credit card delinquency. However, this plan was only to be in effect for two years, after which Applicant discovered that he did not have the money to continue with payments. He entered into another payment plan for this debt in August 2015.

Applicant enjoys an excellent reputation for the quality of his work performance. He is credited with having brought substantial improvements to his company after having been promoted to a position of leadership. The current acting director of his company considers Applicant trustworthy and his work performance outstanding.

The Judge’s Analysis

The Judge concluded that Applicant's financial problems raised two concerns: Disqualifying Conditions (DC) 19(a): "inability or unwillingness to satisfy debts;" and 19(c): "a history of not meeting financial obligations."¹ The Judge resolved the Federal tax lien in Applicant's favor, in light of his offer in compromise. She also entered favorable conclusions for the medical debt that Applicant had paid and for the other debt that had been incurred by Applicant's son. For the remainder, however, she made adverse findings. Though noting that Applicant's financial problems were affected by circumstances outside his control, she also stated that Applicant's problems were the result of his own decisions, such as his withdrawals from his retirement account without paying the required taxes. In addition, she concluded that he had not demonstrated responsible action.² For example, she stated that a debt that was being paid through garnishment is entitled to less weight than one being paid voluntarily. She also cited to evidence that Applicant is still behind on his mortgage payments and that he has large credit card debts that have yet to be resolved. She concluded that, on the whole, Applicant's financial problems evidence poor judgment.

Discussion

Applicant contends that the Judge erred in concluding that his case established security concerns. He argues that he is not at risk of engaging in illegal acts to pay his debts. However, the concern under Guideline F is not simply that an applicant might be tempted to compromise classified information in order to pay his debts.³ A Judge should also consider the extent to which an applicant's circumstances cast doubt upon his judgment, self-control, and other characteristics essential to protecting national security information. *See, e.g.*, ISCR Case No. 14-01479 at 2 (App. Bd. Sep. 2, 2015). In this case, the evidence shows that Applicant has had delinquent debts for many years, including Federal income tax obligations. The evidence in the record is sufficient to establish an apparent inability to satisfy debts over a period of time as well as a history of not paying debts. It is sufficient to raise concerns about Applicant's judgment, a characteristic expected of someone with access to classified information. We resolve this issue adversely to Applicant.

The balance of Applicant's brief is a challenge to the Judge's weighing of the evidence. He argues that the reasoning that underlay the favorable findings should have been extended to the remainder of the SOR allegations. However, the Decision as a whole provides a reasonable explanation for the Judge's different conclusions regarding Applicant's various debts. The Judge could plausibly conclude that the offer in compromise demonstrated responsible action regarding the IRS debt, as she could with the small medical debt that Applicant had satisfied. These two conclusions do not undermine her findings that, at the close of the record, Applicant was still behind on his mortgage payments despite having obtained a loan modification, that he had exhibited at best

¹Directive, Enclosure 2 ¶ 19(a) and (c).

²Directive, Enclosure 2 ¶ 20(b): "the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances[.]"

³A clearance adjudication is not an inquiry into whether an applicant is of poor character. *Hill v. Dept. of the Air Force*, 844 F. 2d 1407 at 1409 (10th Cir. 1988).

sporadic payments for one of the large credit card debts, and that another debt was subject to involuntary collection.

The record supports a conclusion that Applicant had not mitigated the debts that the Judge found against him, in that he had not established a track record of payment for them. *See, e. g.*, ISCR Case No. 14-04565 at 2 (App. Bd. Sep. 18, 2015) (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.) This is especially so when the remaining debts are viewed in light of the Judge’s findings about the non-alleged conduct. Applicant argues for an alternative interpretation of the evidence, but he has not shown that the manner in which the Judge weighed the evidence was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016).

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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board