

KEYWORD: Guideline F

DIGEST: While the Judge’s characterization of Applicant as a “foolish victim” may not be short of the mark, it does nothing to ameliorate concerns that Applicant’s poor judgment is an ongoing feature of his life, one not checked by lessons painfully learned at the hands of swindlers. Viewing the evidence as a whole, the Judge’s decision fails to consider important aspects of the case and runs contrary to the weight of the record evidence. Favorable decision reversed.

CASE NO: 14-05803.a1

DATE: 07/07/2016

DATE: July 7, 2016

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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 February 7, 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 decision on the written record. On March 25, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran granted Applicant's request for a security clearance. Department Counsel appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

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

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

Applicant is an employee of a Defense contractor. In about 2007, Applicant decided to invest in real estate. He bought a rental property in another state. However, renters caused substantial damage to it, which Applicant could not afford to fix. This property went into foreclosure, and there is no evidence of a deficiency judgment.

In addition, Applicant entered into an agreement with a company whereby the company would use Applicant's credit to buy houses and pay him a percentage of the transaction. Twenty to thirty credit cards were opened in Applicant's name, and the company charged about \$200,000 on them. Although they made payments for a while, the company "disappeared" in 2008. Decision at 2. The Judge found that Applicant and the credit card companies were swindled.

Applicant retained a debt settlement company long before he completed or submitted his security clearance application. A number of his creditors obtained judgments against him and garnished his wages. A credit report shows that multiple accounts have been paid or settled. The Judge also found that several of Applicant's debts had been successfully disputed and were removed from his credit reports or fell off due to age. Applicant pays his current expenses and is able to pay his older debts.

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

The Judge concluded that Applicant had mitigated the concerns arising from his delinquent debts. He stated that Applicant's "enthusiasm for real estate investing led him to poor choices" and that "Applicant is a victim, a foolish victim under the circumstances, but a victim nonetheless." *Id.* at 6. The Judge also noted that Applicant is continuing his efforts at debt resolution, although there are accounts that have yet to be paid. The Judge concluded that Applicant has established a plan to resolve his debts and has taken significant action to implement the plan. He stated that Applicant has acted responsibly under the circumstances and that there are clear circumstances that Applicant's problems are unlikely to recur. The Judge also took note of Applicant's stable work history.

### **Discussion**

There is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). 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, we will review the 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. 14-02563 at 3-4 (App. Bd. Aug. 28, 2015).

Guideline F provides that

[f]ailure or inability to . . . satisfy debts and meet financial obligations may indicate . . . a lack of judgment . . . which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. Directive, Enclosure 2 ¶ 18.

The concern 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. *See, e.g.*, ISCR Case No. 12-09719 at 2 (App. Bd. Apr. 6, 2016). Even if an applicant has actually paid his debts, underlying circumstances may impugn his judgment. *See, e.g.*, ISCR Case No. 14-02394 at 3-4 (App. Bd. Aug. 17, 2015).

We note the Judge’s findings that several of Applicant’s debts have been resolved by garnishment, which diminishes the weight to which this evidence is entitled. *See, e.g.*, ISCR Case No. 09-05700 at 4 (App. Bd. Feb. 24, 2011). In a similar vein, that some debts have dropped off his credit report is not meaningful evidence of debt resolution. *See, e.g.*, ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015).

We also find persuasive Department Counsel’s argument that Applicant’s claim to have been a victim of fraud is buttressed by little, if any, corroboration. The record contains a document to the effect that Applicant is included in a Department of Justice Victim Notification System for an ongoing investigation. However, “there is no obvious correlation between this investigation and the real estate scheme.” Appeal Brief at 3. Department Counsel also states, correctly, that the record contains no evidence that any real estate was actually purchased with Applicant’s cards, nor does it provide details of the scheme which, “on its face, appears illogical and incomprehensible.” *Id.* In a DOHA proceeding, it is the applicant’s task to provide evidence to “rebut, explain, extenuate, or mitigate” the concerns raised by the SOR. Directive ¶ E3. 1.15. Applicant’s failure fully to explain the cause of his poor financial health undermines the Judge’s conclusion that he has met his burden of persuasion under the *Egan* standard.

Department Counsel’s comment about the absurdity of Applicant’s venture broaches the most problematic aspect of this case, which is the extent to which Applicant’s explanation for his debts, on its face, raises serious concerns about his judgment. He told his clearance interviewer that

he first learned of this plan by means of a web site, through which he purchased a package of information. Later a spokesman for a company explained to him about “creative financing” and induced him to let the company open 20 to 30 credit cards in his name and make charges on them. Moreover, Applicant advised that all of his communications with this company were over the telephone. Interview Summary at p. 3, included in Item 6, Answers to Interrogatories. There is nothing in the record to suggest why any reasonable person, even one unschooled in real estate transactions, would agree to such a proposal. That Applicant claims to have done so should prompt caution in deciding whether to confide national secrets to him. As we stated in an earlier case that Department Counsel cites in his brief, an applicant who was defrauded by means of a facially preposterous real estate scheme cannot fairly claim that her debts arose from circumstances outside her control or that she otherwise had exhibited sound judgment in the handling of her finances. *See* ISCR Case No. 08-08435 at 4-5 (App. Bd. Jul. 16, 2009).

Moreover, the record contains other evidence that weakens Applicant’s case for mitigation. He advised the clearance interviewer that he was about \$1,000 in arrears in taxes arising from the rental property that was the subject of foreclosure. Applicant told the interviewer that he did not believe that he should have to pay tax on property that he does not own. The nature of this tax obligation is not developed in the record, but Applicant’s statement further impugns his judgment, to the extent that he seems to believe that a person can avoid tax lawfully assessed on real estate merely by selling the property.<sup>1</sup> Interview Summary at p. 3. While the Judge’s characterization of Applicant as a “foolish victim” may not be short of the mark, it does nothing to ameliorate concerns that Applicant’s poor judgment is an ongoing feature of his life, one not checked by lessons painfully learned at the hands of swindlers. Viewing the evidence as a whole, the Judge’s decision fails to consider important aspects of the case and runs contrary to the weight of the record evidence. *See* ISCR Case No. 14-02563, *supra*.

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<sup>1</sup>Applicant also told the interviewer that he was not able to pay the mortgage on this property unless it was rented. This has some bearing upon his financial judgment, insofar as the availability of renters is never guaranteed. Applicant stated, for example, that on one occasion the house was vacant for six months. We also note the following, drawn from the interview summary: “[Applicant] thought he had listed all or most of the credit cards and judgments on his application, although he inserted phony loan/account numbers because he did not know the appropriate loan/account numbers.” Interview Summary at 5.

**Order**

The Decision is **REVERSED**.

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