

KEYWORD: Guideline F

DIGEST: Applicant contends that the Judge’s treatment of his case for mitigation failed to take into account significant evidence, including his financial counseling; his having resolved other, non-alleged, debts; and his unemployment. In fact, the Judge addressed much of the evidence that Applicant cites. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Given evidence that the debt at issue in this appeal had been delinquent for many years, that Applicant apparently has the ability to address it, and that by his own admission he has done little to do so, the Judge’s conclusions about mitigation are sustainable. Adverse decision affirmed.

CASENO: 14-06131.a1

DATE: 06/15/2016

DATE: June 15, 2016

In Re:)	
)	
-----)	ISCR Case No. 14-06131
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Skyler Samp, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 27, 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 24, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Wilford H. Ross 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 circumstances raised security concerns; whether the Judge’s mitigation analysis was erroneous; and whether the Judge’s whole-person analysis was erroneous. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant’s financial problems began in 2002, when he lost his job and experienced two years of unemployment. His SOR lists two significant credit card debts, one of which Applicant had paid and that the Judge resolved in his favor. The other credit card debt, for over \$24,000, had not been the subject of payment arrangements. Applicant’s last payment on this debt was over six years ago, and he admitted that he had not spoken with the creditor very often. The Judge noted evidence of two other debts, for nearly \$19,000 and \$17,000 respectively, that had been satisfied through garnishment. These debts were not alleged, and the Judge stated that he was considering the evidence in the context of mitigation and the whole-person analysis.

Applicant has approximately \$2,000 per month available to pay bills. He also testified that he had somewhere between \$1,000 and \$3,000 in his checking account at any one time. He took a financial counseling course in August 2015.

The Judge’s Analysis

The Judge concluded that Applicant’s circumstances raised security concerns, particularly 19(a)¹ and 19(c).² As stated above, he resolved one of the SOR debts in Applicant’s favor. For the other, though noting evidence of Applicant’s unemployment, he concluded that Applicant had not demonstrated responsible action. Applicant stated that his contacts with this creditor had been “few and far between.” Decision at 5. Moreover, he had not worked out a payment plan, despite having enough funds with which to do so. The Judge also concluded that Applicant’s having taken a credit

¹Directive, Enclosure 2 ¶ 19(a): “inability or unwillingness to satisfy debts[.]”

²Directive, Enclosure 2 ¶ 19(c): “a history of not meeting financial obligations[.]”

counseling course, while favorable, was not enough fully to mitigate the concerns arising from this remaining debt.

In the whole-person analysis, the Judge noted that Applicant had experienced financial problems for many years, problems that had not been fully resolved. He cited to evidence that two other debts had been resolved through judicial means. Overall, the Judge concluded that there is little evidence that Applicant can maintain a budget or resolve his debts. The Judge ultimately concluded that Applicant's security concerns were not mitigated.

Discussion

Applicant contends that his circumstances do not raise security concerns. He argues that the Judge was punishing him for paying his debts sequentially as funds became available rather than paying them off all at once.

The Directive presumes a nexus between alleged or proven conduct under any of the Guidelines and an applicant's security clearance eligibility. *See, e.g.*, ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016). In this case, Applicant admitted the two allegations contained in the SOR. In addition, the Government presented evidence that Applicant had been delinquent in paying the two debts in question for many years. Applicant's arguments are not sufficient to rebut the presumption that his circumstances raise security concerns. We note that a clearance adjudication is not an effort to collect a debt. *See, e.g.*, ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Much less is it punishment for purported financial misconduct. Rather, the Directive provides that it is an effort to examine an applicant's conduct or circumstances for what they may reveal about the applicant's judgment, trustworthiness, and reliability.³ The Judge's analysis was consistent with the requirements set forth in the Directive.⁴

Applicant contends that the Judge's treatment of his case for mitigation failed to take into account significant evidence, including his financial counseling; his having resolved other, non-alleged, debts; and his unemployment. In fact, the Judge addressed much of the evidence that Applicant cites. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-05795 at 2 (App. Bd. Apr. 26, 2016). Given

³A Judge should consider the extent to which an applicant's financial problems cast doubt upon his or her 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). The Directive states that failure to meet financial obligations may indicate unwillingness to abide by rules and regulations, thereby raising questions about an applicant's ability to protect classified information. Directive, Enclosure 2 ¶ 18. *See Id.* at 2-3.

⁴Applicant also contends that the Judge erred by stating that he had shown no evidence of a payment plan. He argues that it is not necessary to have a payment plan, when one can save up the funds to pay his debts *in toto*. We note that, in his Response to the SOR, Applicant stated that he had worked out a payment plan for the debt at issue. That he presented no such evidence at the hearing is a matter that a Judge might be expected to note.

evidence that the debt at issue in this appeal had been delinquent for many years, that Applicant apparently has the ability to address it, and that by his own admission he has done little to do so, the Judge's conclusions about mitigation are sustainable. Moreover, we conclude that the Judge's whole-person analysis complies with the requirements of Directive ¶ 6.3, in that the Judge considered the totality of the evidence in reaching his decision. *See, e.g., ISCR Case No. 15-00424 at 2-3 (App. Bd. Apr. 20, 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: Catherine M. Engstrom
Catherine M. Engstrom
Administrative Judge
Member, Appeal Board