

KEYWORD: Guideline F

DIGEST: The Judge was not required to cite to specific risks to national security, such as security violations, espionage, or the threat of foreign exploitation, to show Applicant is a security risk. We find no error in the Judge’s analysis in which she concluded that Applicant presented insufficient evidence to mitigate the established security concerns. Adverse decision affirmed.

CASE NO: 15-01208.a1

DATE: 08/26/2016

DATE: August 26, 2016

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 19, 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 May 31, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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 misapplied the mitigating conditions and 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 48 years old, married, and has one young child. He has been working for his currently employer since 2012. This is his first request for a security clearance.

The SOR alleged 21 delinquent debts totaling about \$96,000. Applicant attributed his financial difficulties to becoming unemployed in 2009.<sup>1</sup> Due to his unemployment, his income was reduced from \$85,000 per year to \$400 per week in unemployment benefits. He continued to pay his bills through June 2010, when he stopped paying his consumer debts. He sold assets, used his savings, and borrowed money from his family. He believes he acted responsibly under the circumstances because he continued to pay his mortgage, utilities, health and car insurance, and provide food for his family.

In his answer to the SOR, Applicant claimed he owed nothing on the debts because the accounts had either been deleted or soon will be deleted. He noted that the debts were about six years old and have been charged-off accounts. Although some debts have not been removed, he noted that they were cancelled and a state's statute of limitations absolved him of unsecured debts after four years. He provided a 2011 Form 1099-C showing one of the alleged debts was cancelled.

Applicant stated that he does not intend to service any of the SOR debt. He noted that, because the debt has expired, he is not being harassed or pressured and cannot be sued. He believes it would be highly irresponsible and illogical for him to start to pay back tens of thousands of dollars of debt that is no longer being collected. He also noted that he has not incurred any new debt and presented documentation showing the payment of other debts.

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

The Judge noted that Applicant has a significant amount of collection debt that is not resolved or in a repayment plan. The Judge discussed three mitigating conditions and concluded that two were partially applicable. Acknowledging his efforts to pay certain bills and his inability to pay others, the Judge concluded that he failed to provide sufficient mitigation of the security concerns.

### **Discussion**

Applicant argues that the Directive sets forth several mitigating conditions and, if he met any

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<sup>1</sup> In his security clearance application, Applicant indicated that he left his job in 2009 by mutual agreement following notice of unsatisfactory performance. He stated that, since his unhappiness with the job was already known, he believed the "unsatisfactory performance" was a pretext by his then-employer to let someone go during the recession.

one of the mitigating conditions, he then satisfied the Government's security concerns. He contends that he met several of the mitigating conditions, but the Judges set those aside because he did not meet all of them and, in doing so, she ignored his commonsense arguments. The application of disqualifying and mitigating conditions does not turn simply on a finding that one or more of them applies to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole. Thus, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. ISCR Case No. 04-08975 at 2 (App. Bd. Aug. 4, 2006). From our reading of the decision, we find no basis for concluding that the Judge applied a standard that required Applicant to meet all of the mitigating conditions.

In this case, the Judge noted that Applicant explained that he did not owe any of the alleged debts because they had either been deleted from his credit report or soon would be deleted, and he also relied on a state statute of limitations to absolve himself of debts. The Appeal Board has long recognized that debts remain relevant for security clearance purposes even if they are no longer enforceable due to the running of the statute of limitations or cannot be legally listed on a credit report due to the passage of time. *See e.g.*, ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005) and ISCR Case No. 03-20327 at 6 (App. Bd. Oct 26, 2006).<sup>2</sup> We also have held that reliance on a state's statute of limitations does not constitute a good-faith effort to resolve financial difficulties and is of limited mitigative value. ADP Case No. 06-18900 at 5 (App. Bd. Jun. 6, 2008) (citing ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005) and ISCR Case No. 01-09691 at 2-3 (App. Bd. Mar. 27, 2003)). Applicant's disagreement with the Judge's weighing of the evidence, or his ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. ISCR Case No. 14-01284 at 3 (App. Bd. Apr. 6, 2015).

Applicant also argues that he is not a threat to national security, notes the Judge did not cite to any evidence that he is a risk to national security, and reiterates the debts are beyond the statute of limitations and will be removed from his credit report in 11 months. He further argues the Judge has little knowledge of economics or how financial systems work, and she erred on the side of caution to mask her lack of knowledge. Security clearance decisions are not an exact science, but rather involve predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-529 (1988). The Federal Government need not wait until an applicant mishandles or fails to safeguard classified information before it can deny or revoke access to classified information based on an applicant's conduct or circumstances that raise security concerns even in the absence of security violations. ISCR Case No. 07-09966 at 3 (App. Bd. Jun 25, 2008). The Guideline F security concern is as follows:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to

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<sup>2</sup> Compare ISCR Case No. 12-04806 (App. Bd. Jul. 3, 2014). In that case, Applicant corroborated efforts to settle debts that were in "charged-off" status. Also, that Applicant had received financial counseling. Ultimately, the Board affirmed the Judge's favorable decision.

abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, Enclosure 2 ¶ 18.

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility. *See, e.g.*, ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012). In this case, Applicant's answers in his security clearance application and the information in two credit reports are sufficient to raise the two disqualifying conditions that the Judge addressed, 19(a)<sup>3</sup> and 19(c).<sup>4</sup> Once disqualifying conditions are established, the burden shifts to Applicant to present evidence demonstrating extenuation or mitigation sufficient to warrant a favorable security clearance decision. *See* Directive ¶ E3.1.15. The Judge was not required to cite to specific risks to national security, such as security violations, espionage, or the threat of foreign exploitation, to show Applicant is a security risk. We find no error in the Judge's analysis in which she concluded that Applicant presented insufficient evidence to mitigate the established security concerns.

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.'" *Egan at* 528. *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

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<sup>3</sup>Directive, Enclosure 2 ¶ 19(a): "inability or unwillingness to satisfy debts[.]"

<sup>4</sup>Directive, Enclosure 2 ¶ 19(c): "a history of not meeting financial obligations[.]"

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