

KEYWORD: Guideline F

DIGEST: A Judge should consider the circumstances underlying an applicant’s delinquent debts. A Judge is not required to discuss every piece of evidence. A whole-person analysis requires evaluating an applicant’s case in light of the entirety of the evidence. Adverse decision affirmed.

CASE NO: 15-02760.a1

DATE: 12/29/2016

DATE: December 29, 2016

_____)	
In Re:)	
)	
-----)	ISCR Case No. 15-02760
)	
)	
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 March 2, 2016, 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 October 20, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein 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.

The Judge's Findings of Fact

Applicant has worked for his present employer for more than 25 years and has held a clearance since the early 1990s. Applicant has financial problems, the SOR alleging over \$700,000 in delinquent debts. Applicant attributed his problems to real estate losses during the 2008 recession. He owned several pieces of property that he could not sell. He also acquired credit card debt as a result of remodeling his house and financing his children's college education.

Applicant hired a debt management firm but became unhappy with them when they changed ownership. Applicant closed his account and filed for Chapter 13 bankruptcy. He listed assets of over \$1.4 million and liabilities of over \$1.5 million. This filing was converted to Chapter 11 because the value of his assets exceeded the limit for Chapter 13. At Applicant's request, the case was dismissed and he sold a house to pay off some of his debts.

Applicant's SOR debts include two time share accounts, a home equity loan, credit card debts, etc. Some of the debts, such as the time shares, were resolved through debt forgiveness. Some were paid or settled for lesser amounts. Applicant failed to show that he had resolved two of the credit card debts.

Applicant took an early distribution from a 401(k) plan in order to pay off some of his debts. As a result he incurred a tax obligation to his state in the amount of over \$31,000. Applicant's wages are being garnished to satisfy this debt. A Federal tax lien that resulted from this distribution has been resolved. Applicant took a significant amount of personal travel between 2007 and 2009 and recently returned from a trip to Hawaii. He has received a performance award at his job and enjoys a good reputation for his judgment and professional competence.

The Judge's Analysis

The Judge resolved some of the debts in Applicant's favor, including the largest, a mortgage that had been delinquent for more than \$520,000. Concerning those allegations that she resolved against Applicant, the Judge cited to evidence that some had been forgiven but found that this was not the same as Applicant having paid the debts. Though noting circumstances outside Applicant's control that affected his financial stability, the Judge also stated that at least some of his problems were due to his own decisions and conduct. She concluded that Applicant had failed to demonstrate responsible action. She found that Applicant had not had effective financial counseling and that there are no clear indications that his problems are under control.

In the whole-person analysis, the Judge noted Applicant's years of professional experience and his character evidence. She also stated that his problems were partially attributable to circumstances outside his control. However, she found that Applicant had voluntarily incurred debts

that he had been unable or unwilling to pay. She also cited to his ongoing state tax liability. The Judge stated that the evidence left her with unresolved doubts about Applicant's eligibility for a clearance.

Discussion

Applicant challenges the Judge's mitigation analysis. He notes that the Judge made a adverse formal findings regarding debts that been resolved, which he contends is inconsistent. He argues that the Judge did not take into account favorable evidence, such as his having paid tax liabilities resulting from debt forgiveness. He also argues that he should not be expected to pay creditors for debts that have been charged-off.

It is not anomalous, however, for a Judge to find against Applicant even regarding debts that have been resolved. A Judge evaluates an applicant's history of financial problems for what they may reveal about the applicant's ability to protect classified information. *See* Directive, Enclosure 2 ¶ 18 for the proposition that financial problems may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Accordingly, a Judge can be expected to consider not only the extent to which an applicant's debt have been paid, settled, or forgiven but also the underlying circumstances, which may, in a given case, shed light upon the applicant's judgment and reliability. *See, e.g.*, ISCR Case No. 14-02394 at 3-4 (App. Bd. Aug. 17, 2015).

Applicant cites to evidence that some of his debts have been charged-off. He argues that it is not reasonable to pay a creditor for a debt that has resulted in a tax write-off for the creditor. However, a creditor's choice to charge-off a debt for accounting purposes does not affect the debtor's obligation to the creditor. *See, e.g.*, ISCR Case No. 09-01175 at 2, n.1 (App. Bd. May 11, 2010). As with other debts, a Judge must evaluate a charged-off account in light of the requirements of the Directive. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 15-02854 at 2 (App. Bd. Nov. 22, 2016). Neither has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06686 at 2 (App. Bd. Apr. 27, 2016).

Applicant contends that the Judge's whole-person analysis is "one sided." Appeal Brief at 3. He cites to his having held a clearance for many years, his good credit prior to the events that gave rise to the SOR allegations, his extensive assets that could be sold for payment of any debts incurred in the future, etc. However, a Judge cannot be expected to discuss every piece of evidence in a record, which would be a practical impossibility. *See, e.g.*, ISCR Case No. 12-01500 at 3 (App. Bd. Aug. 25, 2015). In this case, the Judge's findings captured the essential facts that a reasonable person would expect to be addressed based on this record, and her conclusions are consistent with those findings. The whole-person analysis complies with the requirements of Directive ¶ 6.3, in that the Judge considered the totality of the evidence in reaching her decision. *See, e.g.*, ISCR Case No. 14-06653 at 3 (App. Bd. Nov. 18, 2016).

The Judge examined the relevant evidence 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 Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairperson, Appeal Board

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

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board