

KEYWORD: Guideline F

DIGEST: Even if an Applicant has paid delinquent debts the Judge may consider the underlying circumstances in evaluating an the person’s security eligibility. Adverse decision affirmed.

CASENO: 15-02905.a1

DATE: 08/19/2016

DATE: August 19, 2016

In Re:)	
)	
-----)	ISCR Case No. 15-02905
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 5, 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 June 7, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Matthew E. Malone 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: (1) whether the Judge decided the case on the full record, and (2) 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 a 56-year-old employee of a defense contractor. He served in the military for about 13 years and has held a security clearance since about 1980. He was unemployed for about five months in late 2012 and early 2013. His wife experienced medical problems and his son incurred legal bills, but details about those circumstances were not provided.

The SOR alleged that Applicant had six delinquent debts totaling about \$21,200. In 2013, he incurred a Federal tax debt because he mistakenly thought his employer was withholding taxes from his pay. He entered into a repayment plan with the IRS and resolved the tax debt. The other debts arose because he became financially overextended. He retained a debt resolution company to negotiate settlements with his creditors. He submitted copies of settlement offers that were sent to him between September 2010 and October 2014. In response to Department Counsel’s File of Relevant Material, he submitted a letter from the debt resolution company stating he completed the debt settlement program. However, he did not provide details about the program, such as the identity of the debts in the program and proof of payments.

The Judge’s Analysis

The Judge found against Applicant on all of the alleged debts but gave him credit under mitigating condition 20(d)¹ for resolving the Federal tax debt. The Judge concluded that Applicant’s other debts were not the result of conditions beyond his control because he admittedly allowed himself to become financially overextended and also stated he did not provide sufficient information to establish he acted responsibly in the face of his financial problems. The Judge noted that Applicant did not show what debts were resolved in the debt repayment program and did not present information about his current finances to support a finding he is unlikely to become overextended again.

Discussion

¹ Directive, Enclosure 2, ¶ 20(b): “the individual initiated good-faith effort to repay overdue creditors or otherwise resolve debt[.]”

In the Appeal Brief, Applicant contends that the Judge did not weigh and consider all relevant evidence. He cites to such things as his period of unemployment, his wife's medical problems, his son's legal bills, his resolution of the Federal tax debt, and his completion of the debt resolution program. However, the Judge made findings about those matters and discussed them in his analysis of the mitigating conditions. Applicant has not challenged any of the specific findings in the decision. His arguments are neither enough to rebut the presumption that the Judge considered all of the evidence in the record nor are they sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-01284 at 3 (App. Bd. Apr. 6, 2015).

Applicant also contends that the Judge's analysis was contradictory because he determined that Applicant resolved the Federal tax debt, yet found against him on that allegation. Even if an applicant has paid delinquent debts or otherwise resolved financial deficiencies, a Judge may still consider the underlying circumstances in evaluating an applicant's security eligibility. ISCR Case No. 14-02930 at 3 (App. Bd. Dec. 9, 2015). Accordingly, payment of a delinquent debt does not necessarily mandate a favorable ruling on that debt.

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: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

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