

KEYWORD: Guideline F

DIGEST: The concept of good-faith requires a showing that a person acts in a way that shows reasonableness, prudence, honesty and adherence to duty or obligation. Favorable decision affirmed.

CASENO: 06-14521.a1

DATE: 10/15/2007

DATE: October 15, 2007

In Re:)	
)	
-----)	ISCR Case No. 06-14521
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Jennifer I. Goldstein, Esq., Department Counsel
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On November 17, 2006, DOHA 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 30, 2007, after the hearing, Administrative Judge Michael H. Leonard granted Applicant’s request for a security clearance. Department Counsel filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issues on appeal: whether the Judge’s application of Financial Considerations Mitigating Condition (FCMC) 20(d)¹ is unsupported by the facts and is arbitrary, capricious, and contrary to law; and whether the Judge’s whole person analysis is arbitrary, capricious, and contrary to law. Finding no error, we affirm.

The Judge made the following findings of fact: Applicant, an engineer for a federal contractor, owed money to several creditors. One, in the amount of \$983 owed to a bank, was sold to a collection agency. It became the subject of a court-ordered judgement against Applicant. He paid the debt off by means of a garnishment of his annual bonus and by a personal check. This debt was satisfied in February 2007.

Another debt, which has not been paid off as of the date of the hearing, is in the amount of \$8,895, for a credit card account. Applicant has set up a repayment plan whereby he will make monthly payments of \$500 until the debt is extinguished. He made his first payment on February 20, 2007. Applicant also owed \$112.09 to another creditor, which he paid in January 2007.

Applicant owes \$53 for telephone services. He has contacted the creditor but has been unable to find any record of this debt. It remains unpaid.

Applicant’s first marriage ended in divorce in 2001, with the result that he had to pay \$1465 per month in child support, subsequently reduced to \$965 per month. Applicant remarried in 2006. His current wife is employed by the same company as Applicant, their combined household income being higher than \$100,000 a year. Applicant no longer has credit cards, and the balance on his 401(k) plan is about \$125,000.

Department Counsel argues that the record does not support the Judge’s conclusion that Applicant has met his burden of persuasion as to mitigation. Specifically, Department Counsel contends that Applicant has not demonstrated a track record of debt repayment but that his case rests largely on his promises of future good behavior, noting that other than the garnishment action, Applicant’s only voluntary efforts at debt repayment occurred close to the date of the hearing. In Department Counsel’s view, this precludes favorable application of FCMC 20(d).

In an earlier case the Board addressed the meaning of “good faith effort” in the following manner:

In order to qualify for application of [this mitigating condition] an applicant must present evidence showing either a good faith effort to repay overdue creditors or some other good faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good faith.” However, the Board has indicated that the

¹“The individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. . .”

concept of good-faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” Accordingly, an applicant must do more than show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [this mitigating condition].²

In Applicant’s case, all but one of the debts have either been paid off or, as with the credit card account, Applicant has established a repayment plan acceptable to the creditor. Evidence supplied by Applicant shows that he has started making payments under this plan. The only debt that has not been even partially satisfied is the one for \$53, for which Applicant testified that he has been unable to verify.³ We note Department Counsel’s point about the recency of Applicant’s repayment efforts; nevertheless, the Judge’s unchallenged findings support the conclusion that these efforts are reasonable, prudent, and honest attempts to honor his financial obligations. The Judge’s findings concerning Applicant’s stable domestic situation is consistent with this view as well. Applicant’s case is to be distinguished, therefore, from one in which the debtor relies principally on bankruptcy, the statute of limitations, etc., as an effort to get out of debt. In light of his unchallenged findings and the record as a whole, the Judge has articulated a rational connection between those findings and his conclusion that Applicant has met his burden of persuasion. *See Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)); ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). *See also* Directive ¶ E3.1.15. (“The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security clearance.”) The Judge’s conclusion concerning the application of FCMC 20(d) reflects a plausible, legally permissible interpretation of the record evidence.

We further conclude that the Judge’s whole person analysis complies with the requirements of Directive ¶ E2.2.1, in that he considered the totality of Applicant’s conduct in reaching his decision. *See* ISCR Case No. 04-09959 at 6 (App. Bd. May 19, 2006). In light of the forgoing, we hold that the Judge’s favorable security clearance decision is neither arbitrary, capricious, or contrary to law.

²ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (internal citations omitted).

³“ . . . I have called [the creditor]. I also called the number that was in the credit report . . . I’ve tried all the contact numbers from the credit report and also calling [the creditor], and they have no account or no records of this particular balance. . . I have called [the creditor], talked to their billing department and everything, gave them the account numbers, my name, all that stuff, and they weren’t able to find that record.” Tr. at 40-41.

Order

The Judge's favorable security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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