

KEYWORD: Guideline F

DIGEST: In evaluating Guideline F cases, the concept of ““meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts.” An applicant is not required to establish that he has paid off each debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant’s financial situation and actions in evaluating applicant’s plan for the reduction of his outstanding indebtedness. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. A reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. Favorable decision affirmed.

CASENO: 07-06482.a1

DATE: 05/21/2008

DATE: May 21, 2008

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In Re:	)	
	)	
-----	)	ISCR Case No. 07-06482
	)	
Applicant for Security Clearance	)	
_____	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Caroline H. Jeffreys, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 15, 2007, 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 February 12, 2007, after the hearing, Administrative Judge Philip S. Howe granted Applicant’s request for a security clearance. Department Counsel timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issue on appeal: whether the Judge’s favorable clearance decision is arbitrary, capricious or contrary to law.

The Judge found Applicant had six delinquent debts totaling approximately \$30,000. Three of the debts were minor, the largest being \$360. The remaining three were substantial. Applicant testified that he was disputing the amount of one of the debts, but that otherwise he planned to enter into repayment plans for their resolution using a portion of his income tax refund as a down payment. The Judge found Applicant’s testimony in that regard, and his plan, credible because Applicant was currently paying off \$18,000 in federally insured student loans which he had revived from default status in 2007. With respect to that loan, Applicant had made a down payment using part of his previous year’s income tax refund, followed by consistent payments for one year of \$150 a month. The lender had then considered the loans rehabilitated and lowered his payments to \$125 a month. Applicant also had two credit cards with balances of only \$170 and \$200, which he paid regularly. Decision at 2-3.

On appeal, Department Counsel argues that the Judge’s favorable clearance decision should be reversed because there is no reasonable basis to dispute any of the debts and Applicant has not demonstrated a meaningful track record of paying off any of the debts alleged in the SOR, noting that the \$18,000 debt for which Applicant established a workable payment plan was not one of the debts listed in the SOR. Therefore, the Judge should not have given Applicant’s plan to resolve his outstanding debts much weight, because such promises to take actions in the future, however sincere, are not a substitute for a documented track record of remedial actions.

In response, Applicant argues that the Judge’s conclusion that he would take action to resolve his outstanding debts in accordance with his articulated plan was reasonable because Applicant had already done so on his own initiative with respect to other substantial debts, and that it was likewise reasonable for the Judge to evaluate Applicant’s entire financial situation, and not just the debts listed in the SOR, in reaching his conclusions. In support of his argument, Applicant offers new

evidence which indicates that Applicant has now paid off or settled four of the six debts listed in the SOR, including his \$13,036 debt for a repossessed car.

The Board may not consider Applicant's new evidence on appeal. *See* Directive ¶ E3.1.29. However, the Board finds Applicant's arguments to be otherwise persuasive.

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." *See, e.g.*, ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. *See, e.g.*, ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." *See, e.g.*, ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. *See* Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. *See, e.g.*, ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The Board has considered the briefs of the parties, the Judge's decision, and the record as a whole. The Judge's material findings of security concern are supported by "such relevant evidence as a reasonable mind might accept as adequate to support such a conclusion in light of all the contrary evidence in the record." Directive ¶ E3.1.32.1. *See also Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620-21 (1966). The Judge also examined the relevant data and articulated a satisfactory explanation for his decision, "including a 'rational connection between the facts found and the choice made.'" *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)). Department Counsel's disagreement with the Judge's weighing of the evidence, or an 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. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Accordingly, the Judge's ultimate favorable security clearance decision under Guideline F is sustainable.

### **Order**

The decision of the Judge granting Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

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

Signed: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

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