

KEYWORD: Guideline F

DIGEST: Applicant's reliance on the unenforceability of his debts under a state statute of limitations fails to demonstrate that the Judge erred. Security clearance decisions are not controlled or limited by such statutes of limitation. Adverse decision affirmed.

CASENO: 07-09966.a1

DATE: 06/25/2008

DATE: June 25, 2008

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In Re:	)	
	)	
-----	)	ISCR Case No. 07-09966
	)	
Applicant for Security Clearance	)	
_____	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

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 October 24, 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 the case be decided on the written record. On March 12, 2008, after considering the record, Administrative Judge Erin C. Hogan denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s failure to mitigate the Guideline F security concerns is arbitrary, capricious, or contrary to law.

Applicant argues that the Judge’s adverse decision should be reversed because the Judge did not give sufficient weight to Applicant’s mitigating evidence. Applicant contends that the outstanding debts listed in the SOR have been paid off, successfully disputed, or charged off and are unenforceable due to the Arizona statute of limitation. Applicant also states that he should have requested a hearing instead of having his case decided on the written record because he believes that Department Counsel was present during the Judge’s consideration of his case. Applicant’s arguments do not demonstrate that the Judge erred.

The Judge found that Applicant’s financial difficulties began when Applicant and his wife bought a house in 1987 that they could not afford. Their two children later developed serious medical problems. Applicant’s financial difficulties became severe in 2001. The SOR listed eight unpaid debts.

Applicant admitted the debts listed in the SOR. In response to DOHA interrogatories and the File of Relevant Material (FORM), Applicant sent documentation regarding his debts. In his appeal brief, Applicant attempts to further explain his attempts to settle his debts. To the extent that the explanation contains information not presented before the Judge reviewed the record, it cannot be considered on appeal, since the Board cannot consider new evidence. Directive ¶ E3.1.29.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. 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*. See, e.g., ISCR Case No. 07-06553 at 2 (App. Bd. April 30, 2008). An applicant’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).

With regard to Applicant’s choice to have his case decided on the written record rather than requesting a hearing, Applicant has not shown that he was disadvantaged by that choice. In this case, Department Counsel had no objection to Applicant’s response to the FORM, but did attach a one-

paragraph argument in rebuttal to it. There is no indication that Department Counsel had any further contact with the Judge or otherwise influenced the Judge's decision.

Applicant's reliance on the unenforceability of his debts under the Arizona statute of limitations fails to demonstrate that the Judge erred. Security clearance decisions are not controlled or limited by such statutes of limitation. A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. Accordingly, even if a delinquent debt is legally unenforceable under state law, the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.<sup>1</sup> *See, e.g.*, ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003).

The federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. *Snepp v. United States*, 444 U.S. 507, 511 n. 6 (1980). 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. A history of financial difficulties raises security concerns. *See, e.g.*, ISCR Case No. 96-0454 at 2 (App. Bd. Feb. 7, 1997) (discussing negative security significance of a history of excessive indebtedness or recurring financial difficulties). In light of his financial situation, Applicant had the burden of presenting evidence to demonstrate extenuation or mitigation sufficient to warrant a favorable security clearance decision. Directive ¶ E3.1.15. Based on the documentation Applicant provided, the Judge discussed Applicant's efforts to improve his financial situation, but explained why the evidence he had provided was insufficient to overcome all the government's security concerns. *See, e.g.*, ISCR Case No. 07-06553 at 2 (App. Bd. Apr. 30, 2008). Given the record evidence in this case, it was not arbitrary, capricious, or contrary to law for the Judge conclude that Applicant had not met his burden of persuasion so as to warrant a favorable security clearance decision under the clearly consistent with the national interest standard. Directive ¶ E2.2. Applicant has not demonstrated error on the part of the Judge.

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<sup>1</sup>*Cf.* ISCR Case No. 00-0345 at 3 (App. Bd. Dec. 12, 2001) (discharge of a debt in bankruptcy does not preclude consideration of an applicant's history of financial problems); ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001) (although an applicant legally may rely on the running of a statute of limitation to avoid paying a debt, such reliance does not constitute a good faith effort to resolve debts within the meaning of the Directive).

**Order**

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael D. Hipple

Michael D. Hipple  
Administrative Judge  
Member, 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