

KEYWORD: Guideline F

DIGEST: Whether or not a debt is collectable is not the focus of a security clearance adjudication. Applicant failed to meet his burden of persuasion as to mitigation. Adverse decision affirmed.

CASE NO: 09-07916.a1

DATE: 05/09/2011

DATE: May 9, 2011

In Re:)	
)	
-----)	ISCR Case No. 09-07916
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Robert W. Wilson, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 17, 2010, 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 17, 2011, after the hearing, Administrative Judge Claude R. Heiny 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: whether the Judge erred in concluding that the evidence raised Guideline F security concerns; whether the Judge erred in his application of the

mitigating conditions; and whether the Judge's whole-person analysis was erroneous. Consistent with the following, we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant is president and CEO of a company employing between five and seven people.

Applicant's SOR lists three delinquent debts to the Internal Revenue Service. Applicant owes the IRS approximately \$120,000 in back taxes, interest, and penalties. In 2000, Applicant started his own business. He loaned the business \$80,000 as startup money. This money was withdrawn from his 401(k) account. Applicant attributed much of the tax debt to his accountant's having designated the funds as a withdrawal, and therefore taxable, rather than as a loan to his business.

Applicant made monthly payments to the IRS. In addition, the IRS started monthly garnishments of Applicant's Social Security payments. Applicant has employed accountants and an attorney to work on his tax debts. He has submitted an offer in compromise to the IRS, offering to pay \$20,000 in full satisfaction of his debts. In the offer he stated that he would borrow the money from friends to make his payments.¹ Although Applicant's accountant expects resolution of the issue in late 2010, there is no further information on this matter contained in the record.

In the Analysis portion of the Decision, the Judge concluded that Applicant's tax debts were not remote in time, since they were ongoing, and, in any event, they cast doubt on Applicant's reliability, trustworthiness, and good judgment.² He further concluded that the debts did not result from circumstances outside Applicant's control³ and that the IRS garnishment action did not constitute a good-faith effort by Applicant to pay his debt.⁴ Moreover, Applicant had not received financial counseling.⁵ Considering the evidence as a whole, the Judge concluded that Applicant had failed to meet his burden of persuasion as to mitigation.

¹Applicant Exhibit C includes a copy of the Form 656, Offer in Compromise, dated July 20, 2009. In Section III of this form, Applicant checked two blocks. One asserted "I have insufficient assets and income to pay the full amount." The other asserted "I owe this amount and have sufficient assets to pay the full amount, but due to my exceptional circumstances, requiring full payment would cause an economic hardship or would be unfair and inequitable." Section VII asserted that Applicant "will borrow the funds from friends" to pay his offered \$20,000 settlement.

²Directive, Enclosure 2 ¶ 20(a): "the behavior happened so long ago . . . and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment[.]"

³Directive, Enclosure 2 ¶ 20(b): "the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances[.]"

⁴Directive, Enclosure 2 ¶ 20(d): "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]"

⁵Directive, Enclosure 2 ¶ 20(c): "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control[.]"

Applicant asserts that the Internal Revenue Service has failed to be responsive to Applicant's offers to compromise. He cites the testimony of an accountant. However, the accountant testified that Applicant had no incentive to push the IRS because the debts were "going away." Tr. at 49. It is well-established that whether or not a debt is collectable is not the focus of a security clearance adjudication. *See, e.g.*, ISCR Case No. 07-16841 at 4 (App. Bd. Dec. 19, 2008).

Viewed in the context of the record as a whole, the Judge's conclusion that Applicant's ongoing tax debts raised Guideline F security concerns is sustainable. *See, e.g.*, ISCR Case No. 07-05434 at 2-3 (App. Bd. Feb. 24, 2009). The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made,'" both as to the mitigating conditions and the whole-person factors. *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)). The Judge's adverse 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 Judge's adverse security clearance 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 E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board