

KEYWORD: Guideline F

DIGEST: The Judge noted Applicant's medical problems and family issues which affected her debt situation and which were circumstances beyond her control. However, the Judge also concluded that Applicant did not submit sufficient evidence of responsible management over the years the indebtedness accrued. The Judge's conclusion is supported by the record evidence. The impact an unfavorable decision may have on an applicant is not a relevant or material consideration in evaluating his or her security clearance eligibility. Adverse decision affirmed.

CASENO: 09-08295.a2

DATE: 02/06/2012

DATE: February 6, 2012

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In Re:	)	
	)	
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	)	
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 July 8, 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 decision on the written record. On June 22, 2011, after considering the record, Administrative Judge Shari Dam denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. On September 13, 2011, the Appeal Board remanded the case to the Judge. The Judge reopened the record and issued a Remand Decision on December 16, 2011, denying 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 her application of the mitigating conditions, and whether the Judge’s adverse security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge’s decision.

The Judge made the following pertinent findings of fact: Applicant works as a configuration analyst for a Defense contractor. She has a Master’s degree in Management of Information Systems. She has three adult children from a previous marriage. Applicant met with a government investigator in September 2009 and discussed her delinquent debts, her financial history, and her plans to enroll in a debt management program.

In the Analysis portion of the Decision, the Judge summarized her essential finding concerning Applicant’s financial condition:

In July 2003 Applicant had approximately \$238,000 of delinquent debt discharged through bankruptcy. After that, she accumulated about \$38,000 in delinquent debts, of which approximately 13 debts totaling \$8,818 remain unresolved, and three other debts on which she is making payments have a combined balance of \$18,405. The total delinquency is \$27,223. Decision at 8-9.

The Judge noted Applicant’s medical problems and family issues which affected her debt situation and which were circumstances outside her control. However, the Judge also concluded that Applicant did not submit sufficient evidence of responsible management over the years the indebtedness accrued. The Judge noted two credit counseling sessions (one occurred in 2010 and one in 2011) and the resolution of seven debts and payments on three more. However, the Judge also noted that Applicant’s response to the FORM had not disclosed her failure to make payments on her delinquent debts in accordance with the schedule she had previously provided to DOHA. The Judge discussed Applicant’s lack of diligence in pursuing the debt management commitment she had made in 2009. Ultimately, the Judge denied Applicant a security clearance.

Applicant’s appeal cites to three specific objections to the Judge’s decision: (1) The Judge’s estimate of Applicant’s income; (2) the Judge’s use of the word “procrastination”; and (3) The Judge’s application of Adjudicative Guideline ¶19 (a), “inability or unwillingness to satisfy debts[.]” The Judge’s estimate of Applicant’s income is a fair characterization of the contents of an exhibit

prepared by Applicant and made part of the record on remand. The Judge's use of the word "procrastination" may be perceived by Applicant as harsh. Still, it reasonably describes Applicant's failure to pursue with diligence her stated plan from 2009 to seek counseling. The Judge's application of Adjudicative Guideline ¶19 (a) is appropriate given the Applicant's financial history.

Applicant discusses her need for the clearance. The Board has previously ruled that the adverse impact an unfavorable decision may have on an applicant is not a relevant or material consideration in evaluating his or her security clearance eligibility. *See, e.g.*, ISCR Case No. 10-01188 at 2 (App. Bd. Jun. 15, 2011).

The remainder of Applicant's brief is an alternative interpretation of the evidence. A party'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. 10-07318 at 3 (App. Bd. Oct. 26, 2011).

In this case, the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and applied relevant conditions. She explained why the disqualifying conduct established under Guideline F was not sufficiently mitigated.

The Board does not review a case *de novo*. After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for her 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)). "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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

### **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: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board