

KEYWORD: Guideline F

DIGEST: The Judge concluded that because it has been more than eight months since Applicant made any payments, the evidence does not support a conclusion that she acted reasonably under the circumstances. This conclusion is reasonably supported by the record evidence. Adverse decision affirmed.

CASENO: 11-09742.a2

DATE: 10/29/2013

DATE: October 29, 2013

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 Department of Defense (DoD) declined to grant Applicant a security clearance. On October 19, 2012, DoD 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 that the case

be decided on the written record. On April 29, 2013, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran denied Applicant's request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30. On July 8, 2013, The Board issued a Remand Decision with instructions to the Judge. On August 9, 2013, the Judge issued a Remand Decision wherein he again denied Applicant's request for a security clearance. Applicant appealed pursuant to ¶¶ E3. 1.28 and E3.1.30 of the Directive.

Applicant raises the following issues on appeal: (1) whether the Judge considered all the record evidence; and (2) whether the Judge's conclusions concerning mitigation are supported by record evidence. For the following reasons, the Board affirms the Judge's decision.

The Judge found: Applicant is 31 years old. Applicant had periods of unemployment after she was discharged from the military in 2005. She was unable to pay all her bills, and a number of debts became delinquent. She is behind on six debts totaling in excess of \$31,000. Three debts that had been delinquent have been paid. She had a garnishment action initiated against her for one of the debts. In August 2012 she indicated that upon completion of her wage garnishment, she would contact her creditors as funds become available.

Applicant contracted with a debt management company on August 5, 2013, to assist her in resolving her debts. She enrolled 11 debts, totaling \$35,703, in the company's debt management program (DMP). The estimated duration of the DMP is 37 months. Applicant agreed to an initial deposit of \$50, followed by payments of \$520 every other week, starting on August 30, 2013. After the company's monthly maintenance fee, the company agreed to make monthly payments of \$976 to Applicant's creditors. Applicant receives financial counseling as part of the program.<sup>1</sup>

The Judge concluded: Applicant's unemployment was beyond her control. To be fully applicable, AG ¶ 20(b)<sup>2</sup> also requires that the individual act responsibly under the circumstances. The total amount of the six debts that Applicant admitted owing is more than \$31,000. In August 2012, Applicant wrote in response to DOHA interrogatories that upon completion of a wage garnishment, she would contact her creditors "as funds become available." The garnishment was completed before Applicant responded to the SOR on November 26, 2012. She has not established that she has made any payments toward her delinquent debts since the garnishment. Applicant has a plan to pay her debts through the DMP, but she has not taken significant actions to implement the plan. There is insufficient evidence for a determination that Applicant's financial problems are under control or that they will be resolved within a reasonable period. Applicant's financial problems are recent and ongoing. No evidence supports a determination that they are unlikely to

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<sup>1</sup>After his initial decision was remanded, the Judge, on his own motion and without objection, gave Applicant until July 16, 2013 to provide any additional material she would like to have considered. He later granted Applicant's request to extend the time for submissions until August 7, 2013. Applicant made a timely submission of an e-mail with an attachment.

<sup>2</sup>"[T]he conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances[.]"

recur. They continue to cast doubt on Applicant's current reliability, trustworthiness, and good judgment.

Applicant made payments toward her delinquent debts in 2010, 2011, and 2012, but there is no evidence that she made any payments since at least November 2012. Because it has been more than eight months since Applicant made any payments, the evidence does not support a conclusion that she acted reasonably under the circumstances. Applicant receives credit for her financial counseling, establishing the first prong of AG ¶ 20(c),<sup>3</sup> but there is insufficient evidence for a determination that Applicant's financial problems are under control or that they will be resolved within a reasonable period. The second prong of AG ¶ 20(c) is not applicable. Security concerns remain despite the presence of some mitigation.

Applicant argues that the Judge's conclusion that the second prong of AG ¶ 20(c) is inapplicable to her situation was erroneous. She cites her enrollment in the DMP as evidence that her debt problems are being resolved or are under control. Given the lack of any record of payments by Applicant under the DMP, the Judge's conclusion that there is insufficient evidence for a determination that her financial problems are under control is reasonable. Applicant also states her belief that the Judge overlooked documentary evidence she submitted regarding the dates of implementation of the DMP. A Judge is presumed to have considered all the evidence in the record unless he specifically states otherwise. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009). Applicant fails to rebut this presumption. Moreover, in his findings of fact, the Judge specifically mentions the dates on which Applicant signed up for the plan, and the dates on which the first payments were due.

Applicant states that she disagrees with the Judge's conclusion that she has not taken significant actions to implement a plan to settle her debts. The Judge acknowledges that Applicant has established a plan, but a review of the totality of his conclusions indicates that the principal component of his analysis is his noting of Applicant's lack of payments under the DMP. Given this evidence, the Judge's conclusion is sustainable. 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. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes 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.'" *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

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<sup>3</sup> "[T]he 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[.]"

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 decision of the Judge 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: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board