

KEYWORD: Guideline F

DIGEST: The fact that Applicant has made only one payment on one debt and is in the preliminary stages of resolving his debts led the Judge to conclude that the problems were ongoing with no clear prospect of resolution. Adverse decision affirmed.

CASENO: 12-01863.a1

DATE: 04/30.2014

DATE: April 30, 2014

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In Re: )  
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 ----- ) ISCR Case No. 12-01863  
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 Applicant for Security Clearance )  
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Corey Williams, Esq. and Alan V. Edmunds, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 22, 2013, 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 a hearing. On January 9, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein denied Applicant's request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.

The Judge made the following findings: Applicant is 50 years old. He has four delinquent debts in the amount of \$61,960. Applicant attributed his debts to a period of unemployment extending from 2009 when he retired from the military to 2011 when he was hired by his present employer. During that period, Applicant and his wife supported themselves on the meager profits from his wife's business and his military retirement pay. Their income dropped by approximately two thirds. Three of the debts are homeowner's association (HOA) debts associated with a rental property owned by Applicant. Applicant offered to make payments to the collection agent for these debts, but the agent wanted a lump-sum payment. The collection agent filed a garnishment summons allowing him to garnish the rent payments from Applicant's tenant. The hearing date for the garnishment action is pending. Applicant recently received a bonus of \$4,000 and he claimed he set aside a portion of the bonus to resolve the HOA debts. However, he failed to submit proof he made any payments on the debts.

Applicant's fourth debt is a home equity line of credit loan in the amount of \$59,802. He became delinquent on this second mortgage when his rental property required costly repairs during his period of unemployment. In April 2013, the collection agent sent Applicant a payment coupon, but Applicant did not submit payment at that time. He intends to list the rental property for sale in the spring of 2014. After being contacted by Applicant, the collection agent indicated that he would be willing to settle the debt for a \$15,000 to \$17,000 lump sum payment. Applicant does not have the funds to settle this debt. He made one payment of \$499.26 in October 2013, but has made no payments since then. He submitted a payoff offer to the creditor, but the collection agent rejected the offer. The debt is unresolved.

Applicant's personal financial statement indicates that he has a remainder of \$605 after meeting his monthly obligations.

The Judge reached the following conclusions: Applicant has had financial problems since September 2009. The four delinquent debts listed in the SOR remain unresolved. Applicant has the means to make payments on or fully resolve these debts, given his monthly surplus of \$605 and his bonus of \$4,000. However, he failed to produce evidence that he is resolving his financial obligations. Applicant has failed to demonstrate that his financial problems are unlikely to continue, recur, or be resolved, calling into question his reliability and trustworthiness. The evidence does

not support the application of Mitigating Condition ¶ 20(a).<sup>1</sup> His unemployment may have been a circumstance beyond his control, but he did not provide evidence that he attempted to responsibly address or manage the delinquent debts as they were accumulating or since he gained his present employment. Mitigating Condition ¶ 20(b)<sup>2</sup> has little application. Applicant did not provide evidence that he participated in credit or financial counseling and all of his debts remain unresolved. Mitigating Condition ¶ 20(c)<sup>3</sup> has no application, as there are not clear indications that his financial problems are under control. Further, while he has been in contact with his creditors and made a payment, he did not provide sufficient evidence that he is making good-faith effort to resolve his debts as required under Mitigating Condition ¶ 20(d).<sup>4</sup> He has made preliminary steps toward contacting his creditors and establishing terms on which his creditors will accept settlements, but has not yet established significant actions to implement that plan. Applicant has not mitigated the Financial Considerations security concerns.

Applicant argues that the Judge failed to apply the Guideline F mitigating conditions properly and that she failed to apply the whole-person concept properly. He states that the financial concerns resulted from the solitary incident of being unemployed for a year, that his ability to repay the debts was hampered by the failure of the creditors to cooperate and their failure to agree to reasonable settlement amounts. Applicant asserts that the Judge understated the efforts he made to resolve his delinquent indebtedness and that he made reasonable and good-faith efforts to address his financial problems. Applicant also argues that the Judge did not consider all the facts and the mitigating evidence that he submitted. Applicant's arguments do not establish error on the part of the Judge.

A Judge is presumed to have considered all the evidence in the record unless he or she specifically states otherwise. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009). Applicant fails to rebut this presumption. A review of the Judge's decision reveals that the Judge listed the potentially applicable mitigating conditions and then discussed the components of those factors in some detail in her analysis. The Judge offered a narrative explanation as to why the disqualifying conduct under Guideline F was not fully mitigated, including in her discussion acknowledgments of the efforts Applicant had made in contacting creditors. The gravamen of her decision, however, was her concern that Applicant's debts remained unresolved at the time of the hearing despite the fact that Applicant had income available for debt retirement. The fact that Applicant had made only one payment on one debt and was in the very preliminary stages of

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<sup>1</sup>“[T]he behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment[.]”

<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[.]”

<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[.]”

<sup>4</sup>“[T]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]”

resolving his problems led the Judge to conclude that his financial troubles were ongoing, with no clear prospect of resolution. The conclusions of the Judge are reasonably supported by the record evidence.

The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. *See, e.g.*, ISCR Case No. 06-25157 at 2 (App. Bd. Apr. 4, 2008). 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. 06-10320 at 2 (App. Bd. Nov. 7, 2007). 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). Applicant's appeal brief essentially argues for an alternate interpretation of the record evidence.

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 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: James E. Moody \_\_\_\_\_  
James E. Moody  
Administrative Judge  
Member, Appeal Board