

KEYWORD: <separate with semicolonsGuidline F

DIGEST: The gravamen of the Judge’s decision was his conclusion that for a period of time that extended over several years, Applicant did nothing to address his delinquent debts, though he had sufficient means to do so over at least a significant part of that span. The Judge’s conclusion is sustainable on this record. Adverse decision affirmed.

CASENO: 12-11805.a1

DATE: 04/08/2016

DATE: April 8, 2016

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**

Shawn C. Graham, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 26, 2015, 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 28, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey 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 found: Applicant is 44 years old. In October 2015, he owed approximately \$65,000 in delinquent student loan debt. He also owed approximately \$22,000 to numerous other creditors, including three charged-off credit card bank debts and one credit card collection account which has been delinquent since 2009, and a judgment obtained in small claims court brought by his ex-wife. Applicant has not made any voluntary payments to any of these creditors since 2011. In 2013, his income was \$147,000, and at that time he was unmarried and had no children. Applicant decided to settle the student loan debt after the creditor made a settlement offer in October 2015. He had until December 2015 to settle the debt. Aside from two garnishments imposed by the IRS in 2011 and 2013, there is no evidence of any payments made toward the student loan debt. He states that he intends to pay the credit card debts once he has the means to do so. He has not made any payments on the small claims judgment, nor has he been in contact with his former spouse. From 2012 until August 2015, Applicant did not take any action to resolve the travel expense debt claimed by his former employer. In late August 2015, he wrote the creditor involved in this debt and disputed his responsibility for it. On October 6, 2015, Applicant sold his house. On October 8, 2015, Applicant provided a \$40,000 cashier’s check to his lawyer to hold in escrow for use to settle his debts.

The Judge concluded: Applicant has mitigated the Government’s concerns regarding three of the SOR allegations. Applicant also receives some credit because of variations in his income, the decline of the real estate market in the state where he had rental real estate property, and needing to move to a different state for employment. He was also deployed overseas, which makes resolving debts more difficult. These were factors beyond his control which adversely affected his finances. However, when Applicant submitted a security clearance application in June 2012, he revealed that he was aware of numerous delinquent debts. The only payment made after he submitted this application was a tax refund that the IRS intercepted in 2013. On May 26, 2015, the SOR was issued in this case, and Applicant learned that his failure to file his tax returns raised a security concern. He has made some progress discovering how he can settle some debts. However, as of the close of the record, no payments were made to his SOR creditors. He still owes about \$86,000 of delinquent debt. He has not made any voluntary payments to SOR creditors since 2011. In 2013, with \$147,000 in income and no dependents, he did not cite any extraordinary circumstances of sufficient magnitude to render him unable to voluntarily pay anything to his SOR creditors.

Applicant did not make sufficient progress on his finances. Financial considerations concerns are not mitigated.

Applicant's appeal brief contains several representations regarding his finances that go beyond the evidence of record. The Board cannot consider new evidence on appeal. Directive ¶ E3.1.29. Applicant has submitted documents evidencing his settlement of his student loan debt subsequent to the close of the record.<sup>1</sup> He states that his efforts at satisfying the debt by placing funds in escrow prior to the close of the record should be evaluated in light of his eventual satisfaction of the debt. The Board does not review cases *de novo*. Moreover, the Board cannot find error where Applicant's argument in support of that error is based upon matters that were not before the Judge.

Applicant's argument concerning his eventual satisfaction of the student loan debt is a component of his argument that the Judge did not give adequate consideration or weight to the evidence Applicant provided subsequent to the hearing but before the close of the record. After a review of the evidence and the Judge's decision, the Board concludes that Applicant has failed to establish error. The Judge discussed specific aspects of the post-hearing evidence proffered by Applicant, and provided sustainable explanations as to why that evidence—and Applicant's mitigation evidence in general—was insufficient to overcome the Government's security concerns. 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 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). The gravamen of the Judge's decision was his conclusion that for a period of time that extended over several years, Applicant did nothing to address his delinquent debts, though he had sufficient means to do so over at least a significant part of that span. The Judge's conclusion is sustainable on this record. "The general standard is that a clearance may be granted only when 'clearly consistent with 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."

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<sup>1</sup>On Applicant's motion at the hearing, the Judge held the record open until September 25, 2015, for the receipt of additional documentary evidence. Upon further motion of Applicant, the record was held open until October 25, 2015. Applicant provided additional written exhibits on October 23, 2015. Documents pertaining to the settlement and payment of Applicant's student loan debt are dated February 2016 and are attached to Applicant's appeal brief.

**Order**

The decision of the Judge is AFFIRMED.

Signed: Michael Ra'anan

Michael Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy  
Administrative Judge  
Member, Appeal Board