

KEYWORD: Guideline F

DIGEST: The Judge’s material findings are supported by substantial evidence. Applicant’s additional debt and the passage of time without meaningful debt resolution constitute significant derogatory information that was not previously adjudicated. Therefore, the Judge did not err in concluding that Applicant’s circumstances raised security concerns despite a prior favorable adjudication. Applicant has not rebutted the presumption that the Judge considered all of the evidence. Adverse decision affirmed.

CASE NO: 14-00398.a1

DATE: 02/10/2015

DATE: February 10, 2015

In Re:)	
)	
-----)	ISCR Case No. 14-00398
)	
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 March 26, 2014, 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 decision on the written record. On November 26, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Philip S. Howe 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’s findings of fact contained errors; whether Applicant’s circumstances raised security concerns; and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the decision.

The Judge’s Findings of Fact

Applicant has been employed by a Defense contractor since June 2013. He was unemployed from January to April of that year. Applicant’s SOR lists four delinquent debts, totaling over \$18,000. Applicant admitted these debts in his response to the SOR. The first debt is over \$15,000 owed on a medical credit card. This debt, owed since October 2010, was for a surgical procedure for Applicant’s wife. He states that he tried to negotiate an installment agreement but that the creditor did not propose terms that he could accept. He sought credit counseling in July 2013, but he did not disclose the results of this undertaking. Applicant has made no payment on this debt, and it is unresolved.

The second is \$601 owed for a medical debt that originated in 2008. Applicant has made no payments on this debt. He claims to have disputed it but provided no corroboration. He contends that his insurance should have paid it. He also contends that he has tried to resolve this debt several times, but no putative creditor will claim ownership. The debt is unresolved.

The third is a medical account for \$189 that has been owed since 2012. Although Applicant claims that he has tried to settle this account, no organization has responded to his inquiries. The debt is unresolved.

The fourth is a judgment for \$2,547. This debt originated in 2006. Applicant purchased a computer while living overseas. He claims that he sought information from a collection agency but has not been successful. He states that this debt has disappeared from his credit reports. It is unresolved.

Applicant states that he is not overextended and is capable of budgeting his money. He provided no evidence of good character or evidence relating to his judgment, trustworthiness, or reliability. The Judge noted that he was not able to evaluate Applicant’s demeanor insofar as the case was decided without a hearing.

The Judge’s Analysis

The Judge concluded that Applicant’s circumstances raised two concerns: “inability or unwillingness to satisfy debts”¹ and “a history of not meeting financial obligations[.]”² In further concluding that Applicant had not mitigated the concerns arising from his delinquent debts, the

¹Directive, Enclosure 2 ¶ 19(a).

²Directive, Enclosure 2 ¶ 19(c).

Judge noted the lack of evidence that they had been resolved. He stated that these debts were not due to circumstances beyond Applicant's control, insofar as they became delinquent well before his 2013 unemployment. The Judge noted that Applicant had received financial counseling but stated that there is no evidence that his delinquent debts are under control. He also noted that Applicant did not corroborate his claim to have disputed two of the debts. In the whole-person analysis, the Judge reiterated that Applicant had done nothing to resolve his debts. He stated that Applicant's lack of action is voluntary and reflects a lack of judgment. He stated that Applicant had made assertions about his finances "without any credible evidence." Decision at 6.

Discussion

Applicant challenges the Judge findings of fact. He asserts that he has paid some of his debts and that he has disputed others. He states that his response to the SOR admitted the existence of these debts in his name but not their legitimacy. In presenting this assignment of error, Applicant cites to evidence from outside the record, some of which post-dates the Judge's decision. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. We have examined the Judge's findings in light of the record that was before him. We conclude, among other things, that the record does not support Applicant's argument that his response to the SOR admitted merely to the existence of the debts in question. See, for example, the following from the first paragraph of his response: "I will state that I admit that all of the items on the Statement of Reasons are financial obligations that belong to me." Throughout the response Applicant states or implies a belief that he himself incurred these debts. The Judge's findings are based upon substantial record evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant argues that his circumstances do not raise security concerns. He believes that the evidence viewed as a whole does not suggest unwillingness to pay debts or a history of not meeting his financial obligations. We note that the Directive presumes a nexus between admitted or proven conduct under any of the Guidelines and an applicant's clearance eligibility. *See, e.g.*, ISCR Case No.11-10255 at 4 (App. Bd. Jul. 28, 2014). In the case before us, Applicant's SOR admissions, along with the evidence contained in the File of Relevant Material, support the Judge's conclusions that Applicant's debt problems go back many years, that Applicant has not resolved the SOR debts, and that Applicant has not shown a connection between his unemployment and his financial difficulties.

In making this argument, Applicant cites to evidence that he was granted a clearance in 2011 by another Government agency. He states that three of the SOR debts were present at that time and that they did not pose a barrier to a favorable decision. He argues that the additional debt that he acquired since then should not be a reason to conclude that he is a security risk. However, the additional delinquent debt and the passage of time without demonstrable efforts at debt resolution, taken as a whole, constitute significant derogatory information that was not previously adjudicated. Accordingly, the Department of Defense is free to evaluate Applicant's current circumstances and his pertinent history. *See* ISCR Case No. 11-09245 at 4-5 (App. Bd. Jul. 8, 2014) for a discussion

of reciprocity between DoD and other agencies in adjudicating clearance applications. The Judge's conclusion that Applicant's financial problems raised concerns under Guideline F is sustainable.

Applicant cites to evidence that he believes supports his case for mitigation. Among other things, he notes that his clearance interview contains a statement to the effect that there is nothing in his background that could be used for purposes of blackmail. However, this statement merely summarizes Applicant's replies to the interviewer's questions. It does not represent the interviewer's opinion of Applicant's trustworthiness or judgment. *See, e.g.*, ISCR Case No. 11-08118 at 3 (App. Bd. Aug. 12, 2013). Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-10255, *supra*. Neither are they sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-00173 at 3 (App. Bd. Aug. 8, 2014).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision, both as to the mitigating conditions and the whole-person factors. The 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 Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael 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