

KEYWORD: Guideline F

DIGEST: The application of mitigating conditions does not turn on finding simply that one or more apply to the facts of the case. The Judge relied on the extent of applicant's indebtedness and the paucity of mitigating evidence. Adverse decision affirmed.

CASENO: 14-00321.a1

DATE: 06/05/2015

DATE: June 5, 2015

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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 Department of Defense (DoD) declined to grant Applicant a security clearance. On April 22, 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 March 25, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact**

Married with three children ranging from 14 to 25 years of age, Applicant has worked for Federal contractors since 2011 and for her current employer since 2013. Applicant’s SOR lists seven delinquent debts, including two judgments and a debt resulting from an automobile repossession. The judgments resulted from her failure to repay “payday loans.” Decision at 2. Applicant contends that these judgments were satisfied through wage garnishments. Applicant submitted no evidence to show that her automobile debt was satisfied, although she anticipates that it will be removed from her credit report in the near future. The Judge found that four of Applicant’s SOR debts were unresolved, totaling over \$13,000. Applicant attributes her financial problems to a period of “unsteady employment” prior to securing a job in 2011. *Id.* at 3. She resolved delinquencies concerning her student loans and is now current on them. Other than a credit report, Applicant did not submit information regarding her current finances.

### **The Judge’s Analysis**

The Judge concluded that Applicant’s financial circumstances raised two Disqualifying Conditions (DC): 19(a)<sup>1</sup> (inability or unwillingness to satisfy debts) and 19(c)<sup>2</sup> (a history of not meeting financial obligations). In examining Applicant’s case for mitigation, the Judge noted the effect of unemployment on her financial condition and that she had resolved her delinquent student loans. However, the Judge stated that, despite having held steady full-time employment since 2011, Applicant had not addressed several of her SOR debts. He cited to Applicant’s statement that she is waiting for them to fall off of her credit reports. He stated that, other than a credit report, Applicant did not submit sufficient evidence to permit a favorable finding about her current finances. In the whole-person analysis, the Judge noted that Applicant had been candid about her financial condition. However, he concluded that her overall financial history and a paucity of evidence concerning her current finances raise doubts about her fitness for a clearance.

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<sup>1</sup>Directive, Enclosure 2 ¶ 19(a).

<sup>2</sup>Directive, Enclosure 2 ¶ 19(c).

## Discussion

Applicant argues that her circumstances do not raise DC 19(c). However, given that her financial problems go back several years, and given the number of delinquent debts alleged and supported by substantial evidence, we find no reason to disturb the Judge's conclusion on this matter. *See* ISCR Case No. 08-10012 (App. Bd. May 7, 2010). Applicant argues that she established mitigation, contending that the Directive does not specify a particular number of Mitigating Conditions that must be satisfied before a favorable decision can be rendered. We do not read the Judge's Decision as stating or implying such an interpretation. As we have long noted, the application of Mitigating Conditions does not turn on finding simply that one or more apply to the facts of a case. *See, e.g.*, ISCR Case No. 07-16064 at 3 (App. Bd. Jan. 12, 2009). Rather, the Directive requires a Judge to consider the entire record in evaluating the extent to which the applicant has met his or her burden of persuasion. In this case, the Judge's reliance on the extent of Applicant's debts and the paucity of mitigating evidence was consistent with the record that was before him. We find no error in the Judge's treatment of Applicant's case for mitigation. Applicant submits a copy of her reply to the File of Relevant Material, which was already included in the record. Applicant has not rebutted the presumption that the Judge considered all of the evidence. Neither has Applicant shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 12-02817 at 2 (App. Bd. Apr. 17, 2015).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. 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 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