

KEYWORD: Guideline F

DIGEST: A credit report can normally be sufficient to meet the substantial evidence standard for the government's burden of production for allegations of delinquent debt. On the other hand, it may not be sufficient to meet an applicant's burden of persuasion as to mitigation. Adverse decision affirmed.

CASENO: 14-03612.a1

DATE: 08/25/2015

DATE: August 25, 2015

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In Re:)	
)	
-----)	ISCR Case No. 14-03612
)	
)	
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 December 2, 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 June 23, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley 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 Applicant was denied due process; whether the Judge’s findings contain errors; and 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

Applicant is married to his second wife. He attended college between March 2005 and April 2007 and he served six years in the Reserves. While married to his first wife, Applicant opened three credit card accounts which, between 2010 and 2013, became delinquent. These debts, totaling over \$25,000, were charged off. Applicant stated that the debts were incurred by his first wife, who made charges without his permission. He claims that he has resolved them, and they no longer appear on his credit reports. The Judge stated that Applicant’s claim that the charges were made by his wife cannot be corroborated from the evidence supplied. He commented that, without more documented payment progress, he could not conclude that the debts had been paid or settled. He stated that the fact that they no longer appear on his credit reports is not conclusive that they were actually resolved. Applicant provided no job performance evaluations, nor did he provide evidence of community service, etc.

The Judge’s Analysis

The Judge found against Applicant on all three allegations contained in the SOR. He stated that the debts were fully documented in the credit reports. Though crediting Applicant’s presentation to the effect that his ex-wife bears at least some responsibility for them, the Judge went on to state that there is insufficient evidence to explain when and how she used the credit cards and why Applicant was not able to address them before they were charged off. The Judge stated that, without appropriate corroboration, he could not conclude what steps, if any, Applicant had taken to resolve the debts. In the whole-person analysis the Judge stated that, while Applicant’s ex-wife may have played a considerable role in the financial problems at issue in this case, there was insufficient evidence to show that Applicant has good judgment and is trustworthy.

Discussion

Applicant notes the Judge’s finding that he had not submitted any character references, performance appraisals, etc. He claims that he was not advised that he could submit such evidence. However, Applicant was provided with a copy of the Directive, which states that, in a decision on the written record, an applicant has 30 days from receipt of the Government’s evidence to submit

written objections, rebuttal, mitigation, etc. Directive ¶ E3.1.7. The File of Relevant Material (FORM), prepared by Department Counsel, also advised Applicant of this right. The FORM was accompanied by a cover letter from DOHA, which advised that Applicant had 30 days from the date of receipt “to submit your objections or *any additional information you wish to be considered.*” Letter, dated April 10, 2015. (emphasis added) Although character references and performance evaluations were not explicitly mentioned, the guidance that Applicant received was sufficient to place a reasonable person on notice of the general extent of his right to present evidence. Applicant was not denied due process. *See, e.g.*, ISCR Case No. 09-08083 at 3 (App. Bd. Jul. 15, 2011).

Applicant challenges the Judge’s findings of fact. He states that the Judge erred by not finding that he had resolved the debts alleged in the SOR, insofar as they no longer appeared on the credit reports. He also takes issue with the Judge’s comment that it is not clear why Applicant was not able to retrieve payment records going back to 2013. The Judge made a finding about the recent credit report. However, his overall conclusion was based, in part, on a paucity of evidence showing how the debts were incurred and what particular steps Applicant took to resolve them. Moreover, the Judge was not bound to accept at face value Applicant’s explanation for his inability to obtain proof of debt payment or to find that explanation mitigating. The Judge’s material findings of security concern are based upon substantial evidence or constitute reasonable inferences that could be drawn from the evidence. Applicant has cited to no harmful error in the Judge’s findings. *See, e.g.*, ISCR Case No. 11-00970 at 2 (App. Bd. Feb. 28, 2012). In addition, his argument is not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 09-06602 at 2 (App. Bd. Jan. 28, 2011).

Applicant argues that his most recent credit reports (which were submitted by him) show that his delinquent debts have been resolved. He asserts that the Judge improperly gave more weight to the credit report submitted with the Government’s evidence, and that the more recent credit reports submitted by him were entitled to at least equal weight. He notes that none of the credit reports were corroborated by other evidence, and the Judge essentially required him to establish his attempts to respond to his debts with evidence other than the credit reports he submitted. Thus, the Judge required corroboration for his credit reports offered in mitigation, but did not require corroboration for the Government’s credit report to establish the delinquent indebtedness. Applicant fails to establish error on the part of the Judge.

The Government bears the burden of production on controverted issues of fact, and that burden is satisfied by establishing facts by substantial evidence. *See* Directive ¶ E3.1.32.1. Adverse information from a credit report can normally meet the substantial evidence standard for allegations of indebtedness. *See, e.g.*, ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006). In this case, the credit report offered by the Department Counsel was detailed and straightforward regarding the pertinent SOR allegations, and was therefore sufficient to establish the Government’s case regarding the basic fact of Applicant’s delinquent indebtedness. Once these debts were established, Applicant bore the ultimate burden of persuasion and was required to bring forth evidence to convince the Judge that granting him a clearance was clearly consistent with the national interest.

A credit report, in and of itself, may not be sufficient to meet an applicant's burden of persuasion as to mitigation, insofar as it provides little evidence regarding the underlying circumstances of the debt. *See, e.g.*, ISCR Case No. 08-11735 at 2 (App. Bd. Sep. 21, 2010). The fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. Indeed, even if a credit report states that a debt has been paid, that fact alone does not, in and of itself, resolve concerns arising from the dilatory nature of an applicant's response to his debts or other circumstances that detract from an applicant's judgment and reliability. In this case, the Judge commented on the absence of detailed evidence about how Applicant addressed his finances and reasonably had doubts about his clearance eligibility based on that lack of evidence. Moreover, a review of the record indicates that the credit reports submitted by Applicant do not establish that the delinquent debts have been retired.

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 Ra'anan
Michael 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