

KEYWORD: Guideline F

DIGEST: The Appeal Board gives deference to a Judge’s credibility determination. Applicant failed to rebut the presumption that the Judge considered all of the evidence in the record. A Judge need not reject a witness’s testimony due to a lack of corroboration. However, such a lack may be relevant in evaluating the testimony. Adverse decision affirmed.

CASE NO: 14-03836.a1

DATE: 03/17/2016

DATE: March 17, 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**

Sheldon I. Cohen, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 23, 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 December 2, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason 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 erred in his credibility determination 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 has a Ph.D. He has worked continuously for a Defense contractor since 2000 and has held a clearance since 2003. His financial problems resulted in large measure from his efforts at real estate investment.

In the early 2000s, Applicant purchased and renovated real estate. He was able to sell two properties but a third went into foreclosure. The foreclosure sale left no deficiency judgment. In 2005, he purchased five properties. Debts arising from three of them were alleged in the SOR and debts from two resulted in adverse findings by the Judge. Applicant could not find reliable tenants for one of these SOR properties, nor was he able to sell it or engage in a short sale. It was eventually the subject of a foreclosure sale. Applicant believes that his responsibilities for the property ended with the sale. The debt outstanding from these two properties is in excess of \$88,000. Decision at 4. The two SOR debts arising from this real estate transaction are not resolved.

Applicant bought another property in 2006, using a construction loan of about \$260,000. The property went into foreclosure when Applicant's partner was not able to make his share of the payments. Applicant's wages were garnished, but the garnishment was lifted in 2014. Applicant's partner resumed making payments on his share of the mortgage. Applicant still owes a balance of over \$45,500 on the construction loan. This debt was not alleged in the SOR, but the Judge stated that he was considering it as part of his whole-person analysis.

In addition to Applicant's real estate problems, he owed a small debt to a medical provider. Applicant disputed this debt but provided no corroboration regarding the basis for the dispute.

Applicant has sought financial counseling from two or three sources, but these programs had hidden fees which discouraged him from retaining a debt consolidation company. Applicant's and his wife's savings, retirement, and investment accounts total about \$236,000.

Applicant enjoys an excellent reputation for his work performance, his colleagues supporting him for a promotion. He is valued for his leadership and for his problem-solving ability.

### **The Judge's Analysis**

The Judge cited to evidence that Applicant owes over \$88,000 in connection with the delinquent accounts referenced above. In concluding that Applicant had not met his burden of persuasion as to mitigation, the Judge found that Applicant made contradictory statements at the hearing concerning his intent to pay his debts. He stated that Applicant's apparent inaction regarding his delinquent debts resulted from his belief that they will be removed from his credit reports after seven years. Though noting evidence of circumstances outside Applicant's control that

affected his financial difficulties, the Judge concluded that Applicant had not demonstrated responsible action in regard to his debts. He cited to evidence that Applicant has sufficient assets which could be used to pay the amounts owed but has done nothing because he does not believe that he is responsible for the debts. The Judge stated that merely waiting for the statute of limitations to run does not equate to a good-faith effort to resolve debts. The Judge noted that Applicant provided no corroboration for his denial of responsibility for the debts at issue. In the whole-person analysis, the Judge stated that Applicant's financial circumstances had improved by the lifting of the garnishment and by his partner's resumption of payments. Despite this, and despite sufficient assets, Applicant had not contacted creditors to attempt a payment plan.

### **Discussion**

Applicant challenges the Judge's application of the Guideline F mitigating conditions. In doing so, he asserts that the Judge erred in stating that he had made contradictory statements that impugned his credibility. We give deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1. Inconsistent statements can undermine an applicant's credibility. *See, e.g.*, ISCR Case No. 14-01056 at 3 (App. Bd. Aug. 17, 2015).

We have examined the transcript and conclude that the Judge's credibility determination is supportable. Applicant testified that he believed that he did not owe the deficiency judgments because the property that secured the mortgage loans had been sold. He stated that the debts would drop off his credit reports after seven years. Tr. at 94. On the other hand, he also stated that he was going to try to pay back whatever he could. Tr. at 91. These statements are not consistent with one another, one denying the legitimacy of the debts and the other implicitly admitting it. We find nothing in the record that clearly resolves the apparent inconsistency so as to undermine the Judge's credibility determination. Applicant's argument is not sufficient to undermine the Judge's credibility determination.

Applicant cites to record evidence that he believes is favorable to him, such as the downturn in the real estate market, a circumstance that was beyond his control. He also cites to evidence that he had looked into some debt consolidation services, that he had experience with real estate investing, that he had stated an intention to repay his debts, among other things. 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. 14-06093 at 3 (App. Bd. Dec. 4, 2015). As Department Counsel argues in his Reply Brief, Applicant's arguments amount to an alternative interpretation of the evidence. This is not enough 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. 14-06440 at 4 (App. Bd. Jan. 8, 2016).

Applicant challenges the Judge's reliance on an absence of documentary support for his claim that he did not owe certain debts. He argues that his statements alone are sufficient to establish this mitigating condition. While there is no rule that a Judge must reject a witness's testimony in the absence of corroboration, depending on the circumstances that is a factor that may be taken into account in assessing that testimony. *See, e.g.*, ISCR Case No. 95-0578 at 2 (App. Bd.

Oct. 2, 1996). In the case before us, we note that the Mitigating Condition in question actually includes documentary corroboration as an element.<sup>1</sup> We find no error in the Judge having applied the plain language of the Directive in addressing Applicant's case for mitigation. Applicant also challenges the Judge's inclusion of Applicant's wife's 401(k) plan in evaluating the worth of Applicant's assets. Even if this were an error, however, it would not undermine the Judge's conclusion that Applicant had sufficient assets from which to pay his delinquent debts. Therefore, assuming without deciding that the Judge erred, the error was harmless. *See, e.g.*, ISCR Case No. 14-03601 at 3 (App. Bd. Jul. 1, 2015) for explanation of harmless error.

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: Micahel 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

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<sup>1</sup>Directive, Enclosure 2 ¶ 20(e): "the individual has a reasonable basis to dispute the legitimacy of the past-due debt . . . and provides documented proof to substantiate the basis of the dispute[.]"