

KEYWORD: Guideline F

DIGEST: As Applicant acknowledges, a debt may be removed from a credit report for reasons other than payment such as age. Adverse decision affirmed.

CASENO: 14-04648.a1

DATE: 09/09/2015

DATE: September 9, 2015

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| In Re:                           | ) |                        |
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| -----                            | ) | ISCR Case No. 14-04648 |
|                                  | ) |                        |
| 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 October 29, 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 25, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert J. Tuider 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 is arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact**

Applicant served in the U.S. military for twenty years and has been employed by the Defense industry ever since his retirement. He has worked for his present employer since 2012. He “has successfully held a security clearance since 1984.” Decision at 2. Applicant divorced his first wife in 2006, remarrying in 2010.

Applicant’s SOR lists eleven delinquent debts, for such things as credit cards, utility services, medical expenses, cable services, etc. He attributed his financial problems to the divorce. He also attributed them to the failure of three businesses that he and his former wife had owned, though he provided no information about how or why these businesses failed. Applicant claimed in his SOR response that he had resolved his debts. However, the only corroboration that he provided for this assertion related to two of the eleven allegations. Otherwise he submitted nothing showing his efforts to resolve his financial problems. The Judge noted that the File of Relevant Material (FORM) had clearly stated that the evidence as it then existed was bereft of mitigating information and that Applicant had 30 days in which to submit written matters setting forth objections, rebuttal, extenuation, mitigation, or explanation.

The Judge noted Applicant’s assertion that his service in the military and in the Defense industry evidenced honesty, trustworthiness, and honor. Applicant also stated that his efforts to settle his debts show that there should be no concern about his ability to protect classified information.

### **The Judges’s Analysis**

The Judge concluded that Applicant’s financial problems raised concerns under Guideline F. He resolved in Applicant’s favor the two debts that he had settled or paid. However, regarding the balance of the allegations, the Judge concluded that Applicant had submitted insufficient evidence in mitigation. Though noting that Applicant’s debts may have been affected by circumstances outside his control, the Judge concluded that Applicant had failed to show that he had acted responsibly to resolve them. He also stated that Applicant provided no information about payments he may have made, efforts to contact creditors, a credible dispute of any of the debts, settlement negotiations, financial counseling, etc. He stated that Applicant’s failure to demonstrate

“more substantial steps to resolve his debts” impugns his judgment. Decision at 7. The Judge concluded that Applicant had failed to demonstrate mitigation.

In the whole-person analysis, the Judge cited to Applicant’s military career and to the lack of security violations in his record. However, he concluded that the adverse evidence outweighed the positive, given the lack of mitigating information.

### **Discussion**

Applicant argues that the record, viewed as a whole, does not show a history of failing to meet his financial obligations. We construe this as an argument that his circumstances do not raise concerns under Guideline F. The Directive presumes a nexus between admitted or proven conduct under any of the Guidelines and an applicant’s eligibility for a clearance. *See, e.g.*, ISCR Case No. 11-10255 at 4 (App. Bd. Jul. 28, 2014). When an applicant denies an allegation, the Government must produce substantial evidence of the facts alleged. Directive ¶ E3.1.14. *See* ISCR Case No. 10-00925 at 3 (App. Bd. Jun. 26, 2012). In this case, Applicant admitted several of the allegations, thereby relieving the Government of any burden of production regarding them. In addressing those allegations that Applicant had denied, the Government produced Applicant’s answers to DOHA interrogatories (which included a summary of his clearance interview) as well as credit reports. Credit reports themselves can often meet the Government’s substantial evidence burden. *See, e.g.*, ISCR Case No. 10-00925, *supra*, at 3. In the case before us, Applicant’s admissions and the Government’s exhibits are sufficient to constitute substantial evidence of the allegations of security concern. Applicant’s argument is not enough to rebut the presumption of nexus, and the Judge did not err in concluding that Applicant’s financial difficulties raise concerns about his judgment and reliability, qualities essential to protecting classified information. *See* Directive, Enclosure 2 ¶ 18.

Applicant argues that he submitted sufficient evidence in mitigation, noting that his response to the SOR included pages from his credit report that, he believes, corroborate his claims of debt resolution. However, this argument consists principally of a challenge to the weight that the Judge assigned to the evidence. Given the record as a whole, we cannot say that the Judge mis-weighted the evidence that Applicant submitted. Among other things, and as Applicant’s own brief acknowledges, a debt may be removed from a credit report for reasons other than payment, for example, its age. The Judge did not err in concluding that Applicant had failed to provide enough of meaningful debt resolution to justify a favorable conclusion.

Applicant’s citation to his favorable evidence, such as his military service and good security record, is 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 at 4 (App. Bd. Jul. 28, 2014). Although an absence of prior security violations is a matter that a Judge should consider, along with all the other evidence in the record, it does not preclude a Judge from concluding that an applicant’s circumstances present security concerns that the applicant failed to mitigate. The Government does not have to wait until an applicant has compromised or mishandled classified information before it can deny the applicant a clearance. Even those with good prior records can encounter circumstances in which their judgment and reliability might be compromised. *See, e.g.*, ISCR Case No. 11-13626 at 3-4 (App.

Bd. Nov. 7, 2013); *Adams v. Laird*, 420 F. 2d 230, 238-239 (D. C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). In pressing his arguments on appeal, Applicant has included matters that are not contained in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

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