

KEYWORD: Guideline F

DIGEST: Applicant assertion about his testimony concerning a written budget is unconvincing. Department Counsel asked him if he had a written budget for his household, and he answered “no.” There was no suggestion that the subject under discussion was a budget as a hearing exhibit. The context of the other questions asked in that dialogue does not support his argument. The question that immediately preceded the one at issue was “Does your wife currently work?” The Judge’s finding is sustainable. Adverse decision affirmed.

CASENO: 14-04802.a1

DATE: 03/21/2016

DATE: March 21, 2016

_____)	
In Re:)	
)	
-----)	ISCR Case No. 14-04802
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Gregory F. Greiner, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 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 31, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam denied Applicant’s request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge’s decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable security clearance decision.

The Judge found: Applicant is 41 years old. He was unemployed for four months in 2008 and for eight months from 1999 to 2000. Applicant’s current salary is approximately \$70,000. He does not have a written budget. After paying bills, he has about \$700 remaining at the end of each month. Applicant has resolved \$2,695 of the \$19,664 delinquent debts alleged in the SOR. Approximately \$16,969 of the alleged amount remains unresolved, the largest debt of approximately \$15,000 being from an automobile repossession. Applicant disputes the debt and, it remains unresolved, as do three other debts of approximately \$800, \$550 and \$380. There is no evidence that Applicant obtained credit or financial counseling. He did not provide a workable plan or budget from which his ability to resolve the remaining debts and avoid additional problems can be predicted with any certainty.

The Judge concluded: Applicant’s financial problems have been ongoing since 2008 and continue into the present. He has experienced some periods of unemployment, and more recently has incurred medical bills, which were circumstances beyond his control. However, he has provided insufficient evidence that he acted responsibly while the debts were accumulating over the years. He did not offer any evidence that he received credit or budgetary counseling, and there are no indications that his finances are under control. Applicant did not meet his burden to mitigate the security concerns arising from his financial considerations.

Applicant argues that an objective review of the record shows that he successfully mitigated two of the six SOR debts by paying them off and he provided mitigating evidence for the remaining debt concerns, including credit report evidence that two of the remaining debts were no longer being reported. Applicant takes issue with the Judge’s analysis that he provided insufficient evidence that he acted responsibly while the debts were being accumulated over the years. He asserts that he is now in the position to resolve his past bills and that he is taking care of any issues that are outstanding. Applicant argues that the Judge gave great weight to a finding that Applicant did not use a monthly budget when planning his expenses and that this finding is not supported by the record. Applicant also asserts that the Government did not present evidence to support the proposition that Applicant did not live within his means or exhibited a lack of judgment regarding his finances. Applicant’s arguments do not establish error on the part of the Judge.

Applicant assertion about his testimony concerning a written budget is unconvincing. After a review of Applicant's testimony and the record as a whole the Board concludes that Applicant's interpretation of Department Counsel's question and his answer on the subject is not plausible. Department Counsel simply asked Applicant if he had a written budget for his household, and Applicant simply answered "no." There was no suggestion, either in the question or the answer, that the only subject under discussion was whether or not Applicant had prepared a written budget as a hearing exhibit. Furthermore, the context of the other questions asked in that dialogue does not support Applicant's argument. For example, the question that immediately preceded the one at issue was "Does your wife currently work?" No evidence exists on the record to support Applicant's assertion that Department Counsel's question was limited to hearing exhibits. Applicant appears to argue that he had a written budget but had simply failed to produce it. No record evidence of a budget exists to support this inference. The Judge's finding that Applicant had not created or used a budget is sustainable.

Applicant's argument that the Government failed to produce evidence of his living beyond his means is misplaced. The SOR alleged, and Applicant admitted, the existence of delinquent debt of security concern. Once Applicant's financial difficulties were established, the burden shifted to him to produce mitigating evidence that would cast his overall financial profile in a favorable light. *See* Directive ¶ E3.1.15.

Applicant asserts that, notwithstanding their appearance on credit reports introduced by the Government, several of the SOR debts do not appear on a credit report introduced by him, and this fact is evidence that he no longer owes the debts. He asserts that the Judge's failure to acknowledge this flawed her mitigation analysis. It is well settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under ¶ E3.1.14. *See, e.g.*, ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010). Conversely, the Board has noted that 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. *See, e.g.*, ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 15, 2015). 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. Moreover, a review of the record indicates that the credit report submitted by Applicant does not establish that the delinquent debts in question have been retired. Applicant's claim of error on this point is without merit.

Applicant argues that the Judge erred by not characterizing his testimony regarding settlement negotiations as good-faith efforts to resolve debts or by recognizing that he had a reasonable basis to dispute the legitimacy of some of the debts. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

Applicant's appeal brief essentially argues for an alternate interpretation of the record evidence regarding mitigation. Applicant's efforts at debt resolution was evidence the Judge was required to consider. However, such evidence does not mandate a favorable decision.

In this case, the Judge made sustainable findings that Applicant had a lengthy and significant history of not meeting financial obligations. She noted that despite some progress, at the time of the hearing, Applicant still had a significant amount of overdue indebtedness that was unresolved. Other than his uncorroborated testimony, Applicant had produced no evidence that he had a workable plan that made it likely that his problems would be resolved quickly. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing. *See, e.g.*, ISCR Case No. 05-07747 at 2 (App. Bd. Jul. 3, 2007). A review of the Judge's decision reveals that, regarding Guideline F, the Judge listed the potentially applicable mitigating conditions and then discussed several components of those factors in her analysis. The Judge found in favor of Applicant as to a number of the Guideline F allegations. However, the Judge offered a narrative explanation as to why the disqualifying conduct under Guideline F was not fully mitigated. The Board concludes that the Judge appropriately weighed the Guideline F mitigating evidence against the seriousness of the disqualifying conduct.

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 consistent with the interests of 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 of the Judge 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