

KEYWORD: Guideline F

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the evidence. The Judge’s findings contain no harmful error. The whole-person analysis complies with the Directive in that the Judge considered the totality of the evidence. Adverse decision affirmed.

CASE NO: 15-01690.a1

DATE: 09/13/2016

DATE: September 13, 2016

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 15-01690
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**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 November 19, 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 decision on the written record. On June 27, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Gregg A. Cervi 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's findings of fact contained errors; whether the Judge failed properly to apply the mitigating conditions; and whether the Judge's whole-person analysis was erroneous. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Applicant has worked for a Defense contractor since early 2014. Before accepting this position, she was a homemaker who worked at some part-time jobs. She enjoys a good reputation for honesty, trustworthiness, and job performance.

In 2008, Applicant's husband left his job to start up a business. The business struggled, and the couple fell behind on their credit cards and mortgage payments. Eventually they had to short-sell their home. In mid-2015, Applicant received notice of two garnishment actions against her. She filed for Chapter 7 bankruptcy protection, though her husband was not included in the petition. Later that year, the court ordered that Applicant's approximately \$62,000 in delinquent debt be discharged. Applicant stated that she has not accumulated any new debts in the past several years and is living within her means. Applicant submitted no documentary evidence to show the current state of her finances, her budget, or otherwise to establish financial stability.

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

Applicant did not submit enough information to meet her burden of persuasion. Applicant's husband was not included in the bankruptcy filing, and she did not provide information about her current level of financial responsibility. There is insufficient evidence to show that Applicant's financial condition has improved since her discharge in bankruptcy. Her financial problems are recent and ongoing, and they continue to cast doubt upon her current reliability and good judgment.

### **Discussion**

Applicant challenges the Judge's findings. In particular, she argues that the Judge erred in finding that the amount of debt subject to the bankruptcy discharge was around \$62,000. She notes that her debts included a student loan which, she states, is not subject to discharge. Therefore, the total amount of discharged debt was much lower. Item 4, Bankruptcy Petition, states that debts for most student loans are not discharged, although it also states that there are exceptions to the general rule concerning dischargeable debts. However, even if the Judge erred in making the challenged finding, it was harmless. A finding that substantially less debt was actually resolved would not likely have produced a different result. *See, e.g.*, ISCR Case No. 14-03601 at 3 (App. Bd. Jul. 1, 2015). Applicant has not cited to any harmful error in the Judge's findings of fact. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant challenges the Judge's application of the mitigating conditions. She reiterates record evidence about the circumstances underlying her financial problems and cites to her character evidence and her interview summary. She also contends that the Judge erred in concluding that her

financial problems are recent. On this last point, we note that a delinquent debt is ongoing until it is resolved. Accordingly, a reasonable person could find that debts that were acquired years ago but not resolved until an October 2015 bankruptcy discharge are recent within the meaning of the Directive. *See, e.g.*, ISCR Case No. 12-03984 at 3 (App. Bd. Jun. 10, 2014) for the proposition that an unpaid debt is a continuing course of conduct. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has she shown that the Judge mis-weighed the evidence. *See, e.g.*, ISCR Case No. 14-05795 at 2, 3 (App. Bd. Apr. 26, 2016). Applicant’s brief is not sufficient to undermine the Judge’s treatment of the mitigating conditions.

We further conclude that the Judge’s whole person analysis complies with the requirements of Directive ¶ 6.3, in that the Judge considered the totality of the record that was before him in reaching his decision. *See, e.g.*, ISCR Case No. 15-00424 at 2-3 (App. Bd. Apr. 20, 2016). He cited to a paucity of mitigating evidence as a reason for denying Applicant a clearance. In a DOHA proceeding, the applicant bears the burden of presenting evidence in mitigation of the concerns raised by the evidence. Directive ¶ E3.1.15. In the case before us, the Judge’s conclusion that Applicant had not presented enough information to meet her burden of persuasion is supportable.

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: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: James F. Duffy  
James F. Duffy  
Administrative Judge  
Member, Appeal Board