

KEYWORD: Guideline F

DIGEST: Debt resolution, including a creditor’s forgiveness of a debt, is not necessarily dispositive. Even if a debt has been paid, a Judge may consider the underlying circumstances in determining whether the applicant has the requisite judgment and reliability. Moreover, Applicant did not explain why he submitted evidence that debts already forgiven in 2012 and 2014 were disputed in 2016. Applicant’s apparently inconsistent conduct detracts significantly from the credibility of his case for mitigation. Adverse decision affirmed.

CASENO: 15-04560.a1

DATE: 10/21/2016

DATE: October 21, 2016

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-04560
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 7, 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 August 8, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Stephanie C. Hess 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 was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant has worked for a Defense contractor since 2014. He served in the military from 1990 until 2014 and held a clearance throughout his time in the service. He received a bachelor’s degree in 2013. Applicant is married with two children.

Applicant’s military career included numerous deployments. As a consequence of his duty schedule, his wife handled the finances. She had surgery in 2008. Due to complications she was debilitated for several months, and Applicant’s mother-in-law paid some of the bills. During this time, the couple “lost control” of their finances. Decision at 2. They fell behind on mortgage payments and became delinquent on other debts. Although they attempted to work out a modification of their mortgage loan, they did not sign the agreement because the payments thereunder were greater than they had expected. Applicant provided no information about the current status of the loan.

Other SOR debts are for credit cards, a medical bill, and a charged-off vehicle loan. Applicant paid the medical bill. A creditor advised Applicant that it had cancelled amounts owed for a charged-off credit card, providing him with a Form 1099-C. Applicant included the cancelled amount in his 2012 income tax return. However, on March 18, 2016, Applicant filed a dispute with the creditor demanding validation of this debt. Applicant’s failure to resolve the vehicle debt led to repossession of the collateral and its sale at an auction, which resulted in a deficiency. Applicant submitted a 1099-C, testifying that the amount forgiven would be included in his 2015 tax return. However, he did not provide a copy of the return with his other post-hearing submissions. Finally, Applicant produced a 1099-C regarding another credit card debt and demonstrated that he had included the forgiven amounts on his 2014 income tax return. However, as with the credit card referenced above, he submitted a letter dated March 18, 2016, in which he disputed the debt.

The majority of the debts alleged in the SOR occurred between 2006 and 2010, when Applicant’s wife was responsible for the family finances. The couple now regularly discuss their

finances. They maintain a budget, although Applicant did not submit a copy of it. They also completed a one-hour credit counseling course.

The Judge's Analysis

The Judge noted Applicant's wife's medical problems, which was a circumstance that was beyond their control. She further noted, however, that two of the SOR debts pre-dated the wife's illness and that others were incurred after her recovery. She stated that the largest of the SOR debts, the delinquent mortgage, is still unresolved. The Judge found that Applicant had paid only one debt, a relatively small one for medical services, and concluded that the debt forgiveness regarding three of the SOR allegations is not entitled to the same weight as actual payment. She stated that, despite Applicant's having disputed certain debts, the record shows that they are legitimate. She also stated that Applicant's on-line counseling, obtained about three weeks before the hearing, was of little mitigating value. She stated that Applicant presented no plan to resolve his debts and that there is no indication that his financial problems are under control. The Judge lauded Applicant's military career, but she concluded that his financial problems resulted from his own intentional and/or neglectful acts.

Discussion

Applicant challenges the Judge's application of the mitigating conditions. Among other things, he notes that one of the debts had been resolved, presumably the medical debt, and argues that payment predating the SOR should be given great weight. He also cites to his evidence that two credit card debts and the deficiency from the sale of his repossessed vehicle were forgiven by the creditors and that he had paid the resulting tax obligations.

While debt resolution, including a creditor's forgiveness of a debt, is something that a Judge must consider, it is not dispositive. In the first place, even if a debt has been paid, a Judge may consider the underlying circumstances in determining whether the applicant has the judgment and reliability expected of those with access to classified information. *See, e.g.*, ISCR Case No. 14-02394 at 3-4 (App. Bd. Aug. 17, 2015). Moreover, Applicant did not provide a clear explanation of why he submitted evidence that debts forgiven in 2012 and 2014 were disputed in 2016.¹ Applicant's apparently inconsistent conduct detracts significantly from the credibility of his case for mitigation. The Judge did not err in concluding that Applicant had no reasonable basis to dispute the debts. After considering the totality of Applicant's challenge to the Judge's mitigation analysis, we find no error.

Applicant cites to evidence that he believes is favorable to him, such as the debt-forgiveness, the effect of his military deployments on his financial condition, his wife's illness, his character

¹When queried about this, Applicant replied that "I wasn't very familiar with my credit report. Even when I saw [the SOR], you know, I didn't fully understand it. I do now. What my options were, how to . . . dispute . . . and try to figure out if it was mine or not." Tr. at 62.

references, etc. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Neither has he 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 cites to a Hearing Office case in support of his effort to get a clearance. We have given this case due consideration as persuasive authority. Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015). In any event, the cited case has significant factual differences from Applicant’s own. For example, it has nothing equivalent to Applicant’s having disputed debts that had been forgiven years earlier.

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

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

