

KEYWORD: Guideline F

DIGEST: The Judge’s findings about the ongoing nature of Applicant’s delinquent debts are based upon substantial evidence. Even if an applicant has paid his debts, however, a Judge may still consider circumstances underlying those debts for what they reveal about the applicant’s judgement, reliability, and willingness to abide by rules and regulations, qualities essential to protecting classified information. Adverse decision affirmed

CASENO: 15-01137.a1

DATE: 09/14/2017

DATE: September 14, 2017

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 15-01137
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Patrick R. Blaszc, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 26, 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). On March 6, 2017, Department Counsel amended the SOR to add additional Guideline F allegations. Tr. at 9. Applicant requested a hearing. On June 7, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Thomas M. Crean 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 Applicant's circumstances raised Guideline F security concerns; 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 served in the military from 1997 to 1999, when he was discharged due to family hardship. Born in another country, he became a U.S. citizen in 2006. His wife is also a naturalized U.S. citizen. He has four children, all of whom Applicant supports. Applicant's current salary is about \$91,000 from a position he has held since early 2012. Applicant's wife works part time. Their combined monthly income is about \$6,200, with \$800 left after expenses.

Applicant filed for Chapter 7 bankruptcy protection in 2013, with additional petitions filed the next year. His debts were discharged in 2015. Applicant's amended SOR includes several delinquent debts, for such things as an automobile loan, student loans, telecommunication services, and other past-due accounts. Applicant attributed his financial problems to his wife's job loss in 2011. The family moved to a less expensive house, which reduced their monthly mortgage payments.

Applicant stopped making payments on his car in 2016 but hopes to bring the loan current with an expected tax refund. At the hearing he stated that he had an agreement with the creditor to pay off the car loan but did not provide verification. Neither did he show that he had made any payments. He submitted a statement after the hearing to the effect that his student loans were in good standing. However, the document that he submitted showed that the last payment on the loan was in 2010 and that there were past-due balances. He also has an agreement to resolve his telecommunication debts.

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

The Judge concluded that Applicant's circumstances raised concerns that he is unable or unwillingness to satisfy his debts and/or that he has a history of delinquent debt. In evaluating Applicant's case for mitigation, the Judge concluded that his debts were numerous and recent and that they were not incurred under circumstances that would render them unlikely to recur. He noted that Applicant incurred additional debts after his bankruptcy discharge and failed to present documentation to show that he had acted responsibly. The Judge stated that Applicant's promises to pay his debts in the future do not equate to a track record of debt resolution and that Applicant had not corroborated his claims that he had payment agreements for his student loans and for the telecommunication debt. He concluded that Applicant had not met his burden of persuasion.

In the whole-person analysis, the Judge noted Applicant's military service and the effect his wife's job loss had on their financial well-being. He also cited to Applicant's having been discharged in bankruptcy which, though a legally permissible recourse, was soon followed by additional debt. The Judge concluded that Applicant had not presented sufficient evidence that his

response to his debts had been reasonable.

## **Discussion**

In presenting his arguments on appeal, Applicant cites to matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. Applicant challenges some of the Judge's findings. He notes factual errors regarding his age and the country of his birth, although as he concedes the latter error is harmless. He states that he rented the less expensive house to which the family moved in 2011 rather than having purchased it, as the Judge stated. Applicant also contends that the Judge erred in his findings regarding the extent to which he is resolving the student loan account and the telecommunication debt.

We have examined Applicant Exhibit E, a printout concerning the student loans. While this document does appear to show that some payments were made after 2010 and that some of the loans are in forbearance, it does not undermine the Judge's ultimate conclusion that Applicant had not actually demonstrated a track record of debt payment. We have considered the totality of Applicant's challenge to the Judge's findings. The Judge's material findings of security concern "are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. Applicant has cited to no harmful error in the Judge's findings.

Applicant denies that his financial circumstances raise security concerns. He argues that credit reports are often unreliable and that he is addressing his financial problems. As we stated above, the Judge's findings about the ongoing nature of Applicant's delinquent debts are based upon substantial evidence. Even if an applicant has paid his debts, however, a Judge may still consider circumstances underlying those debts for what they reveal about the applicant's judgment, reliability, and willingness to abide by rules and regulations, qualities essential to protecting classified information. *See* Directive, Encl. 2, App. A ¶ 18. *See also* ISCR Case No. 15-01737 at 3 (App. Bd. Feb. 14, 2017); ISCR Case No. 14-02394 at 3-4 (App. Bd. Aug. 17, 2015).

In the case before us, Applicant acquired delinquent debts not long after he had been discharged in bankruptcy. When these newer debts are viewed in light of his ongoing responsibility to pay the student loan accounts, which were not discharged, we find no reason to disturb the Judge's conclusion that Applicant has a history of delinquent debt. Such a history can raise reasonable concerns that Applicant lacks the judgment required to protect classified information. *See, e.g.*, ISCR Case No. 09-02045 at 2 (App. Bd. Nov. 2, 2009), in which the applicant's "history of delinquent debt" was found to have raised concerns about her security worthiness.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, both as to the mitigating conditions and the whole-person factors. 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, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility 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