

KEYWORD: Guideline F

DIGEST: In this case, the Judge made no findings at all about Applicant’s financial advisor and his successful efforts at persuading the creditors to forgive substantially all of Applicant’s debts. As a result, the Judge’s analysis failed to consider an important aspect of the case, in particular the applicability of Mitigating Condition 20(c). Unfavorable decision remanded.

CASE NO: 15-02903.a1

DATE: 03/09/2017

DATE: March 9, 2017

In Re:)	
)	
-----)	ISCR Case No. 15-02903
)	
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 30, 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.¹ On December 27, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA)

¹In his Answer to the SOR, dated November 30, 2015, Applicant requested a decision on the written record. He subsequently changed this to a request for a hearing. Email to DOHA, dated April 26, 2016.

Administrative Judge Richard A. Cefola 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 erred in concluding that the Government had produced evidence of security concern and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we remand the case to the Judge.

The Judge's Findings of Fact

Applicant has experienced financial difficulties, which he attributes to his wife having quit her job and to the downturn in the housing market. In 2008, he filed a Chapter 13 bankruptcy petition, which he did not pursue due to having been advised that bankruptcy would have an impact on his security clearance. Three of Applicant's creditors forgave debts—a mortgage and two credit cards. These three debts total about \$125,000. However, Applicant did not demonstrate that he had paid three others—medical bills totaling a little less than \$1,100.

The Judge's Analysis

The Judge resolved the three forgiven debts in Applicant's favor. He also entered favorable findings for a medical debt that Applicant had paid. However, for the three medical debts that were unpaid as of the close of the record, the Judge concluded that Applicant had not demonstrated responsible action. Though acknowledging that Applicant's problems were affected by circumstances outside the his control, the Judge concluded that Applicant's failure to have shown that these debts were paid precluded a favorable overall decision.

Discussion

We resolve the first alleged error adversely to Applicant. He contends, in effect, that the Government had not presented substantial evidence of facts alleged in the SOR and that Applicant's circumstances do not raise security concerns. *See* Directive ¶ E3.115 to the effect that the Government's burden of producing evidence arises only in regard to allegations that an applicant has controverted. In this case, the SOR allegations were not controverted insofar as Applicant admitted them in his Answer. Moreover, the Directive presumes a nexus between admitted or proved facts under any of the Guidelines and an applicant's eligibility for a clearance. *See, e.g.*, ISCR Case No. 15-08842 at 2 (App. Bd. Feb. 14, 2017). However, we are persuaded by Applicant's argument that the Judge's whole-person analysis did not address significant favorable evidence.

In deciding whether the Judge's rulings or conclusions are erroneous, we will review the decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See* ISCR Case No. 14-02563 at 3-4 (App. Bd. Aug. 28, 2015).

The record shows that, due to a concern that bankruptcy would imperil his clearance, Applicant hired a financial counselor who negotiated with creditors, securing forgiveness of three large debts. Applicant testified that he paid taxes on the amounts that the creditors forgave.² Accordingly, Applicant's resolution of the three debts in question was not due simply to his having waited out his creditors but to his own initiative in having sought the assistance of a financial counselor. The Judge's failure to make findings about this and discuss the findings in his analysis impairs his decision.

We note that some amount of medical debt remained unpaid as of the close of the record. However, an applicant does not have to be debt-free in order to qualify for a security clearance. Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct" that is, actions which evidence a serious intent to effectuate the plan. *See, e.g.*, ISCR Case No.13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014). Evidence that Applicant hired a financial counselor, with the result that a substantial portion of his delinquent debts have been resolved, plausibly raises Mitigating Condition 20(c): "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control[.]"³

A Judge is not required to discuss each and every piece of record evidence in making a decision. *See, e.g.*, ISCR Case No. 12-01500 at 3 (App. Bd. Aug. 25, 2015). However, he or she cannot ignore, disregard, or fail to discuss significant record evidence that a reasonable person could expect to be taken into account in reaching a fair and reasoned decision. In this case, the Judge made no findings at all about Applicant's financial advisor and his successful efforts at persuading the creditors to forgive substantially all of Applicant's debts. As a result, the Judge's analysis failed to consider an important aspect of the case, in particular the applicability of Mitigating Condition 20(c).

We conclude that the most appropriate resolution of this appeal is to remand the case to the Judge for him to make appropriate findings about Applicant's mitigating evidence and analyze those findings in light of 20(c). In doing so, the Judge should address the extent to which \$1,100 of unresolved debt properly remains a matter of security concern. The Judge should also address the extent to which Applicant has demonstrated a responsible plan accompanied by concomitant conduct.

Order

²"[Q]: Did you have tax liability on those accounts? [A]: Yes. I put it on my tax forms. I paid taxes on those ones . . . [Q]: Do you currently owe any money on your taxes to either the State or Federal Government? [A]: None." Tr. At 63-64.

³Directive, Enclosure 2 ¶ 20(c).

The Decision is **REMANDED**.

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.

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