

KEYWORD: Guideline F

DIGEST: A Judge must consider not only the extent to which an applicant has actually resolved his debts but also the circumstances underlying them for what they may reveal about his judgement and reliability. Adverse decision affirmed.

CASENO: 15-03778.a1

DATE: 08/04/2017

DATE: August 4, 2017

In Re:)	
)	
-----)	ISCR Case No. 15-03778
)	
Applicant for Security Clearance)	

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 14, 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 May 30, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello 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's SOR lists numerous delinquent debts, for a student loan, medical expenses, etc. The Judge resolved all but two of them in Applicant's favor. The two that she found against him were for \$937 and \$875 respectively. Regarding the first, the Judge found that Applicant made inconsistent statements about them. In his interview he stated that he disputed the debt. In his Answer to the SOR, he stated that he owed the debt and would pay it off. In his response to the File of Relevant Material (FORM), Applicant acknowledged that he had admitted the debt earlier but that he now does not believe the amount alleged is accurate and, accordingly, disputed it. Applicant has not provided proof of actions to resolve this debt.

As for the second, Applicant acknowledged owing the debt but that he had fallen behind in paying it, due to the economy. In his Answer to the SOR, however, he denied the debt, claiming that it had been removed from his credit report. However, a 2016 credit report shows that this account was opened in 2011 and is "seriously past due." Decision at 3. Applicant provided no evidence to show that the debt had been removed from his credit report, paid, or resolved. He provided no information about a plan to resolve his delinquent debts.

The Judge's Analysis

The Judge stated that the two debts described above are not resolved, despite Applicant having been on notice of them for several years. His claim that the \$875 debt is no longer on his credit report is not accurate. These debts are years old and there is insufficient evidence that they are unlikely to recur. He provided no evidence that his overall financial problems originated from circumstances outside his control. Although he asserted that the poor economy caused him to fall behind in paying his bills, he failed to explain why this was so. The Judge concluded that Applicant had not demonstrated responsible action in regard to his debts, noting that even the medical debts, which she resolved in his favor, had been paid only well after the receipt of the SOR. She stated that Applicant's failure to pay his medical debts for years detracted from the extent to which his actions showed good-faith. Applicant has had no financial counseling and she stated that there are no clear indications that Applicant's problems are under control.

Discussion

Applicant argues that the Judge did not perform a sufficient whole-person analysis. Among other things, he notes that the Judge resolved almost all of the allegations in his favor, and the two that she found against him had a combined total of under \$2000. He contends that if the Judge had properly weighed the entirety of the evidence, she would have concluded that he had met his burden of persuasion as to mitigation.

We have considered this argument in light of the record as a whole. Admittedly, the total amount of debt that constituted the basis of the adverse formal findings is relatively small. However, a Judge must consider not only the extent to which an applicant has actually resolved his debts but also the circumstances underlying them for what they may reveal about his judgment and reliability. *See, e.g.,* ISCR Case No. 14-02394 at 3-4 (App. Bd. Aug. 17, 2015).

In the case before us, the Judge found that Applicant did not resolve his medical debts until after receipt of the SOR, which she concluded evidenced a lack of good-faith. *See, e.g.*, ISCR Case No. 14-01243 at 3 (App. Bd. Jun. 18, 2015) (Timing of debt payments is relevant in evaluating an applicant's case for mitigation). She found that Applicant had not presented evidence in support of his claimed nexus between his inability to pay his debts and the recent poor economy. *See, e.g.*, ISCR Case No. 14-00280 at 2 (App. Bd. Feb. 13, 2015), in which the applicant failed to establish a connection between his delinquent debts and circumstances beyond his control that he claimed were the cause. She found that Applicant had not presented a plan to resolve his delinquent debts. *See, e.g.*, ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (An applicant must develop a reasonable plan for repayment of delinquent debts). She also cited to inconsistent statements that Applicant had made about the two debts she found against him. *See, e.g.*, ISCR Case No. 14-01056 at 3 (App. Bd. Aug. 17, 2015) for the proposition that inconsistent statements can undermine the credibility in an applicant's case for mitigation.

While it might on its face appear anomalous that the Judge entered favorable findings for medical debts that she found lacking in evidence of good faith, we do not evaluate a Judge's decision based on individual findings or on sentences isolated from their overall context. *See, e.g.*, ISCR Case No. 11-13664 at 5 (App. Bd. Aug. 15, 2013). To the contrary, we examine a Judge's decision in light of the record as a whole. *See, e.g.*, ISCR Case No. 14-06653 at 3 (App. Bd. Nov. 18, 2016). Applying that requirement to the case at hand, we conclude that the Judge's analysis supports her overall adverse decision, despite an apparent inconsistency between that analysis and some of her formal findings. Given the record that was before the Judge, we conclude that her adverse decision was not arbitrary, capricious, or contrary to law.

The Judge examined the relevant evidence 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, 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