KEYWORD: Guideline F

DIGEST: The Board has previously noted that it is reasonable for a Judge to expect applicants to present documentation about their efforts to resolve debts. As a general proposition, moreover, the lack of corroboration is a factor that judges may consider in determining the amount of weight that should be given to an applicant's statements about particular facts.

CASENO: 15-04851.a1

DATE: 04/28/2017

DATE: April 28, 2017

In Re:	)	
	)	
----------	)	ISCR Case No. 15-04851
	)	
	)	
Applicant for Security Clearance	)	
	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Lawrence A. Ward, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 3, 2016, 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 February 1, 2017, after considering the record, Administrative Judge Eric H. Borgstrom 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 discussion, we affirm the Judge's decision.

The Judge's Findings of Fact

Applicant is a 35-year-old employee of a defense contractor. He is married and has a minor child. He purchased a home in 2006. While still owing monthly mortgage payments on that home, he purchased a second home in 2012. His credit report reflected that he immediately ceased payments on the first home upon purchasing the second home. The mortgage loan for the first home is in foreclosure status with a past-due balance of $67,000. Applicant intentionally walked away from his financial responsibilities on the first home.

Applicant indicated that he consulted an attorney, attempted to sell the first home, sought a deed-in-lieu of foreclosure, and applied for a loan modification, but provided no timeline, details, or documentation of these efforts. The record does not reflect whether these efforts occurred before or after his decision to purchase the second home and abandon the first home.

The Judge's Analysis

Since the evidence raised Disqualifying Conditions 19(a) "inability or unwillingness to satisfy debts" and 19(c) "history of not meeting financial obligations," the burden shifted to Applicant to rebut, explain, extenuate, or mitigate the security concerns. The mortgage debt remains delinquent, and Applicant's willful default continues to cast doubt on his current reliability, trustworthiness, and good judgment. The nationwide housing crisis may have hindered Applicant's ability to sell his first home and may constitute a circumstance beyond his control, but he made a willful and informed decision to cease payments on the loan for the first home when he purchased the second home. There is no evidence he was unable to afford paying on the first home before he decided to cease those payments. He emphasized that the decision to cease loan payments on the first home was because it was a losing investment. His actions constitute a "strategic default" of his mortgage loan.[1] He failed to provide documentary evidence about his purported attempts to sell his house or otherwise resolve the delinquent loan. He provided insufficient evidence of efforts to resolve this delinquent debt and of financial responsibility.

Discussion

Applicant contends that the Judge erred in concluding that Mitigating Condition 20(a)[2] does not apply. He argues that the Judge's analysis of this mitigating condition is inadequate and

---

[1] The Judge defined "strategic default" as "a decision by a borrower who has the financial means to make monthly mortgage payments, but chooses not to do so and, instead, intentionally defaults (*i.e.*, stops making payments) on the mortgage loan." Decision at 6.

[2] Directive, Enclosure 2 ¶ 20(a) states: "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, and good judgment[.]"

consisted of one sentence that his debt remains unpaid. We note the sentence that Applicant is referencing also indicated that "Applicant's willful default on this loan continues to cast doubt on his current reliability, trustworthiness, and good judgement." Decision at 5. In the Appeal Brief, Applicant does not challenge the Judge's conclusion that the default was willful. Additionally, an ongoing, unsatisfied debt is considered recent. *See, e.g.*, ISCR Case No. 07-10575 at 3 (App. Bd. Jul. 3, 2008), holding that an unsatisfied debt is a continuing course of conduct for the purpose of Mitigating Condition 20(a). We find no error in the Judge's conclusion that Mitigating Condition 20(a) does not apply to Applicant's willful default of this significant, ongoing debt.

Applicant also contends that the Judge erred in concluding that Mitigating Condition 20(b)[3] does not apply. He argues that the strategic default occurred due to factors outside of his control, specifically the 2008 recession and housing crisis, and that he has taken a number of steps unsuccessfully to dispose of the first home. We do not find Applicant's arguments persuasive. He purchased the second home in 2012, well after the recession and housing crisis had begun. In the decision, the Judge points out that Applicant stated, "Decision to enter a strategic default scenario was a financial decision, not a hardship decision. Makes more financial sense to take a credit hit and lose the home than it does to throw good money at a losing investment for the next 30 year of the loan." Decision at 2, n. 5, citing Applicant's statements in his security clearance application. Applicant's own words undercut a determination that his financial problems arose from conditions beyond his control. In his argument, Applicant cites to a Hearing Office decision in which the Judge rejected Department Counsel's argument that an applicant's decision to stop making payments on mortgages was a strategic default. The Board gives due consideration to that decision; however, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. *See, e.g.,* ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015). Moreover, the cited Hearing Office decision is distinguishable because Applicant in the present case has categorized his decision to stop making mortgage payments on the first home as a "strategic default." We find no error in the Judge's conclusion that Mitigating Condition 20(b) does not apply in this case.

Applicant further contends that the Judge erred in concluding that Mitigating Condition 20(d)[4] does not apply. He argues he made a good-faith effort to resolve his mortgage. In doing so, he first claims the Judge erred in concluding "[t]here is no evidence that [Applicant] was unable to afford the loan payments on his first home before he decided to cease loan payments and pay only the loan payments on his new (second) home." Appeal Brief at 6, citing Decision at 5. He also points to his statement in his response to the SOR, "We could not afford the old house payments and the new house payment each month." Even if the Judge erred in stating there is "no evidence" that Applicant was unable to afford the loan payments, it was a harmless error that did not likely change the outcome of the case. *See, e.g.,* ISCR Case No. 08-07258 at 2 (App. Bd. Dec. 29, 2009). We note that Applicant has made inconsistent statements about his claim of being unable to pay both mortgages by categorizing his termination of the mortgage payments on the first home as a "strategic

[3] Directive, Enclosure 2 ¶ 20(b) states: "the conditions that resulted in the financial problem were largely beyond the person's control (*e.g.*, loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances[.]"

[4] Directive, Enclosure 2 ¶ 20(d) states: "the individual initiated good-faith effort to repay overdue creditors or otherwise resolve debts[.]"

default" and stating:

> This default was not the result of poor planning and financial hardship. It was the result of a calculated decision about a house that was underwater and showed no signs of recovering. We understood the consequences of the default. The credit hit, the collections agency calls, the ethics of the situation. It didn't make financial sense to continue paying money on an investment that would never result in a gain so we were willing to accept the penalties and chose to walk away from the property. [5]

Applicant next claims the Judge "categorically dismissed" his good-faith efforts to resolve the debt because he did not provide documentary evidence about his efforts to sell the house or otherwise resolve the delinquent loan. Appeal Brief at 7. Arguing that nothing in the Adjudicative Guidelines require documentary evidence, he contends his statements established the good-faith efforts. The Board, however, has previously noted that it is reasonable for a Judge to expect applicants to present documentation about their efforts to resolve debts. *See, e.g.*, ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008). As a general proposition, moreover, the lack of corroboration is a factor that Judges may consider in determining the amount of weight that should be given to an applicant's statements about particular facts. Applicant was responsible for presenting evidence to mitigate security concerns that either he admitted or Department Counsel established. Directive ¶ E3.1.15. From our review of the record, we find no error in the Judge's conclusion that Applicant presented insufficient evidence of good-faith payments or other steps taken to resolve the past-due mortgage.

The balance of Applicant's arguments amount to claims that the Judge did not consider all the evidence or he mis-weighed the evidence. These arguments, however, are neither enough to rebut the presumption that the Judge considered all of the record evidence nor sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See*, *e.g.*, ISCR Case No. 15-04856 at 2-3 (App. Bd. Mar. 9, 2017). Additionally, we find no basis for concluding the Judge erred in his whole-person analysis.

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 national security."

Order

[5] Applicant's Response to the SOR, Item 1 in Department Counsel's File of Relevant Material (FORM).

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