

KEYWORD: Guideline F; Guideline E

DIGEST: A Judge may consider non-alleged debts (a) in assessing an applicant’s credibility; (b) in evaluating an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) in considering whether the applicant has demonstrated successful rehabilitation; and (d) in applying the whole-person concept. Our review of the decision reveals that the Judge only discussed the alleged debts in evaluating Applicant’s evidence in mitigation and change of circumstances. We find no basis for concluding that the Judge considered non-alleged debts in an inappropriate manner. Adverse decision affirmed.

CASENO: 15-07369.a1

DATE: 08/16/2017

DATE: August 16, 2017

In Re:	)	
	)	
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	)	
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 May 1, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision -- security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal

Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Department Counsel requested a hearing. On June 7, 2017, after the hearing, Administrative Judge Philip S. Howe 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 58-year-old management official for a defense contractor. He retired from the military after 20 years of service. He had five periods of unemployment between 2001 and 2011. He also stated that his company lost several Government contracts, that he used his income to keep other contracts going, and that he did not have sufficient funds to pay other debts.

The SOR alleged three delinquent debts totaling over \$38,000. For one of those debts, Applicant admitted owing \$2,160 on a loan with a balance of \$22,720. He testified he closed the account in early 2015 when he could not pay it. He also claimed he was only a user of the account, but his credit reports reflect this was a joint account with his wife. He testified his wife was making payments on the account, but he submitted no documentary proof of those payments.

Applicant denied owing a credit card account that was charged off for about \$15,000. Credit reports from 2014 and 2015 show that Applicant owned this account as of 1984, and it became delinquent in June 2014. Applicant claimed this was a corporate account with multiple users, and he was not personally liable for it. His dispute of this account was not resolved at the time of the hearing. A 2017 credit report shows this debt was the subject of a court judgment in late 2015. After the hearing, he withdrew his dispute and made a temporary payment arrangement with a debt collection agency.

Applicant resolved the third debt, a cell phone collection account for \$290. His recent credit reports also reflected eight non-alleged delinquent accounts. One of the non-alleged debts reflected he owed over \$40,000 on a credit card account that was at least 30 days delinquent.

In October 2014, Applicant submitted a security clearance application (SCA) in which he did not disclose any financial delinquencies. He deliberately falsified his SCA, claiming he did not check his credit reports before answering the questions and was under a lot of stress. Based on the longevity and magnitude of two of the alleged debts, he had to have known they were delinquent and should have been disclosed.

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

Applicant paid the cell phone debt after the hearing. He claims he has a partial repayment plan for the credit card debt, but provided no proof of payments. He has not reformed his financial behavior, which is recent, frequent, and likely to continue.

Applicant deliberately did not disclose a credit card and cell phone debt on his SCA as required. These debts were unpaid for years and he knew of them. He contested that these debts were his obligations, but credit reports show these debts were his responsibility, either individually or jointly with his wife. He did not present any evidence that his theory on non-liability was valid. His contentions in the face of printed facts diminish his credibility on these issues. His testimony that he did not intentionally fail to disclose the delinquent debt is not credible.

## Discussion

Applicant contends the Judge erred in concluding the credit card debt and loan were his responsibility.<sup>1</sup> He argues that the loan was solely his wife's responsibility, that the credit card debt was a corporate account, and that he successfully disputed the credit card debt. We examine a Judge's findings to see if they 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. Record evidence does not support Applicant's arguments.<sup>2</sup> His credit reports, including one that reflects a judgment was entered against him for the credit card debt, provide substantial evidence for the Judge's findings that Applicant was responsible for these debts. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). Applicant also asserts that the Judge "insisted I accept his advice, drop my dispute [involving the credit card debt], and accept the debt to show I was responsible" and stated the Judge's advice was designed to deny him a security clearance. Appeal Brief at 1-2. Our reading of the transcript is not in agreement with Applicant's assertions. Tr. at 71-72. We find no harmful error in the Judge's actual comments about courses of action Applicant could take to demonstrate resolution of the credit card debt.<sup>3</sup>

In making his appeal brief arguments, Applicant notes that the Judge considered debts that were not alleged in the SOR. A Judge may consider non-alleged debts (a) in assessing an applicant's credibility; (b) in evaluating an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) in considering whether the applicant has demonstrated successful rehabilitation; and (d) in applying the whole-person concept. *See, e.g.*, ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). Our review of the decision reveals that the Judge only discussed the alleged debts in evaluating Applicant's evidence in mitigation and change of circumstances. We find no basis for concluding that the Judge considered non-alleged debts in an inappropriate manner.

Applicant also argues that the Judge did not consider his periods of unemployment and did not accurately describe the evidence pertaining to his alleged SCA falsification. We note the Judge made findings of fact regarding Applicant's periods of unemployment. Applicant's argument about

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<sup>1</sup> In his appeal brief, Applicant also raises arguments concerning the cell phone debt. Because the Judge found in favor of Applicant on the cell phone debt, we need not address those arguments.

<sup>2</sup> Applicant's appeal brief contains a document that he did not previously provide to the Judge for consideration. This document constitutes new evidence that the Appeal Board cannot consider. *See*, Directive ¶ E3.1.29.

<sup>3</sup> In the past, we have cautioned that Judges have no authority to advise on the quantum of evidence that would mitigate a security concern and noted that suggested actions in a security clearance adjudication may have significant ramifications in other aspects of an applicant's life. *See, e.g.*, ISCR Case No. 15-05849 at 2 (App. Bd. Jul. 17, 2017).

the adverse falsification finding relate back to his claim that the debts were not his responsibility, which, as discussed above, is not supported by the record evidence. His arguments are neither sufficient to rebut the presumption that the Judge considered all of the record evidence nor enough to show that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 16-00844 at 2 (App. Bd. Jul. 25, 2017).

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, Encl. 2, App A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of national security.”

### **Order**

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan

Michael Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy  
Administrative Judge  
Member, Appeal Board