

KEYWORD: Guideline F

DIGEST: It is well established, however, that a security clearance adjudication does not turn simply on a finding that one or more of the mitigating conditions apply to the particular facts of a case. Rather, an adjudication requires the exercise of sound discretion in light of the record evidence as a whole. Adverse decision affirmed.

CASENO: 16-00396.a1

DATE: 08/15/2017

DATE: August 15, 2017

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 16-00396
-------------------------------------------------------------	---------------------------------	------------------------

**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 June 20, 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 hearing. On May 15, 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 issue on appeal: whether the Judge’s decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact**

Applicant is a 34-year-old employee of a defense contractor. The SOR alleges, and credit reports confirm, that Applicant has 20 delinquent debts totaling about \$26,000. His wife was attending school and collecting GI bill education benefits. In 2009, she experienced medical problems after the birth of their first child that precluded her from working, attending school, and collecting educational benefits. This situation caused Applicant to use credit cards to sustain his family. At some later point, his wife was able to return to work, attend school, and collect GI bill benefits. Due to her medical condition when she became pregnant again, she was unable to engage in those activities and receive those benefits, which resulted in Applicant being unable to keep up with their living expenses and debt payments.

In 2008, Applicant contracted with a credit servicing company and paid them over \$500 per month to assist in paying his bills. Later that year, he started paying the debt directly because he wanted to avoid paying high fees. The debts remaining are listed in the SOR. Applicant resolved five of the alleged debts. Two of the alleged debts are duplicates. He has taken steps to address other debts, but they remain unresolved. He presented letters from former supervisors and associates who noted he is trustworthy, reliable, and has the highest integrity.

### **The Judge’s Analysis**

Applicant’s history of delinquent debts is documented in his credit reports and admissions. He did not present any evidence that he changed his lifestyle to live within his means when his wife encountered the medical problems. Instead, he used credit cards to continue his lifestyle. He also accumulated traffic camera fines that were within his control to avoid. He presented evidence of financial counseling, but it has no bearing on the SOR debts. He paid some of the debt, but many debts remain unpaid. Insufficient evidence was presented of a meaningful track record of debt payment. He claims he contacted most of the creditors to establish payment plans, but presented no documentation of those plans or payments to the creditors. His financial problems are not behind him or under control. He has not established an adequate plan to resolve his remaining debts.

### **Discussion**

Applicant challenges the Judge’s application of mitigating condition 20(a).<sup>1</sup> He argues that the alleged debts are between 6 to 8 years old, that he has not incurred any new debts in several years, and that the alleged debt do not reflect negatively on his current reliability, trustworthiness, and good judgment. The Appeal Board, however, has held that unsatisfied debts are a continuing

---

<sup>1</sup> Directive, Encl. 2, App A ¶ 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[.]” We note that the adjudicative guidelines were revised on June 8, 2017, but this mitigating condition was not changed in that revision.

course of conduct for purposes of mitigating condition 20(a) and that the ongoing nature of delinquent debts is inconsistent with a conclusion those debts are not recent. *See, e.g.*, ISCR Case No. 06-23369 at 4 (App. Bd. Aug. 1, 2008).

Applicant also argues the Judge erred in his application of other mitigating conditions and in his whole-person analysis. He notes, for example, that he received financial counseling, resolved some of the debts, and presented character evidence in support of his security clearance. It is well established, however, that a security clearance adjudication does not turn simply on a finding that one or more of the mitigating conditions apply to the particular facts of a case. Rather, an adjudication requires the exercise of sound discretion in light of the record evidence as a whole. Thus, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance determination. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-01652 at 2 (App. Bd. Jul. 7, 2017).

Applicant contends that it is not fair that "close to 80% of SOR decisions" result in unfavorable clearance decisions. He does not cite any sources for his assertions. The Directive requires that "[e]ach case must be judged on its own merits . . ." and "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."<sup>2</sup> Applicant has failed to establish that he was treated unfairly, that his case was not judged on its own merits, or that any harmful error occurred in his case.

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 Navy v. Egan*, 484 U.S. 518, 528 (1988).

---

<sup>2</sup> Directive, Encl. 2, App. A ¶ 2(b).

**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