

Applicant raised the following issues on appeal: whether the Judge's findings of fact contained errors; whether the evidence raised Guideline F security concerns; and whether the Judge's whole-person analysis ran contrary to the weight of the record evidence. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant worked in the banking and mortgage industry after college. He co-founded a business, of which he is the chairman and chief executive officer (CEO). Applicant divorced his second wife in 2015. He has a child from a first marriage and another from his second.

During the course of their marriage, Applicant and his second wife purchased two houses. Because of Applicant's wife's contributions to the family income, they had no trouble meeting their financial obligations, including mortgage payments, for several years. However, in about 2008, Applicant's wife developed a drinking problem as well as mental health difficulties. In addition, Applicant's business began to struggle. His overall household income declined significantly, and he experienced financial problems. For example, in 2011 he was late on the mortgage payments for both of his homes.

Applicant and his wife separated, embarking upon a protracted divorce proceeding, during which his wife neglected her share of the marital debts. Applicant's problems were magnified by his difficulty in meeting required payments for a *guardian ad litem* appointed during the course of child custody litigation. In 2013, however, Applicant's income from his company improved. For example, in 2013 his salary was nearly \$308,000 and two years later it was over \$270,000.

Applicant's SOR lists several delinquent debts. The Judge found that he was not responsible for two of them. She also found that the debts alleged in SOR ¶¶ 1.c and 1.d were duplicated by two others alleged at 1.g and 1.f and that he had paid the remaining debt, nearly \$700 for cable services. In addition to the debts alleged in the SOR, the record showed that Applicant had failed to file state and Federal income tax returns for several years. He filed his state income tax returns late for 2007 and 2008 and filed late Federal returns for 2004 through 2012.¹ He still owed over \$8,000 to the IRS for tax year 2008 but promised to resolve it "within the next 30 to 45 days." Decision at 5.

The two SOR debts that the Judge found to be unresolved were credit cards alleged at 1.c (\$15,000) and 1.d (\$8,100). An attorney advised Applicant not to pay these debts until the creditors and the amounts were verified. As of mid-2016, 1.c was not listed on Applicant's credit report but there is no evidence that it had been paid. 1.d was the subject of a judgment against Applicant, though he intended to file a motion to vacate it. Applicant's attorney has concluded that the creditors are charging usurious interest rates for these two debts. In 2015, Applicant offered to settle 1.c and 1.d for \$1,350 and \$1,540 respectively but without success.

¹Compare the Judge's findings with Applicant's testimony that the last time he filed both state and Federal tax returns was 1998 and that he finally got caught up on his delinquent filings in 2013. Tr. at 162, 168, and 170.

Numerous business associates, friends, and colleagues attest to Applicant’s drive, work ethic, and integrity. He is lauded for his effort to provide a stable home for his daughter despite the difficult personal circumstances attending his second marriage and subsequent divorce. He enjoys an excellent reputation for integrity, and his character references recommend him for a clearance.

The Judge’s Analysis

As stated above, the Judge found that Applicant was not responsible for two of the SOR debts and that two debts were duplicative of others. She concluded that the remaining three—the two credit cards and the cable services debt—raised security concerns under Guideline F, thereby imposing on Applicant the burden of persuasion as to mitigation.²

The Judge concluded that Applicant’s having paid the cable debt was sufficient to mitigate any concern arising from it. However, she concluded that Applicant had failed to mitigate concerns arising from the two credit cards. She stated that Applicant had been on notice since at least 2015 that these debts were of concern but that he had shown inordinate delay in addressing them, which raises questions about his judgment. Though noting circumstances outside his control that affected his financial problems—his marital difficulties, a downturn in his business, etc.—the Judge concluded that he had not shown responsible action regarding the credit cards. She cited to his significant increase in annual income, which should have enabled him to resolve these remaining debts. She stated that his settlement offers were entitled to little weight, given that they were for relatively small portions of the amounts owed. Though she concluded that 1.f and 1.g did not raise concerns insofar as they were duplicates of the credit card debts, she also concluded that mitigating condition 20(e)³ applied to them, in that Applicant had a reasonable basis for dispute.

In the whole-person analysis, the Judge noted Applicant’s numerous character references and his excellent reputation “for always doing the right thing.” Decision at 14. She found this reputation to be hard to reconcile with Applicant’s difficulty in managing his finances. She stated that, given his business acumen and experience in the banking industry, he should have known that delinquent debts can be transferred to other creditors and that higher balances can result through the accrual of interest. She found that Applicant’s problem with the two debts that she resolved against him was due, at least in part, to his own inattention. She also stated that Applicant showed similar inattention to his obligation to file income tax returns for several years, resulting in delinquent obligations to state and Federal revenue authorities.

Discussion

²The Judge found two disqualifying conditions raised by Applicant’s circumstances: Directive, Enclosure 2 ¶ 19(a) (“inability or unwillingness to satisfy debts”) and (b) (“a history of not meeting financial obligations”). Applicant’s burden of persuasion is set forth in Directive ¶ E3.1.15.

³Directive, Enclosure 2 ¶ 20(e): “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue[.]”

Applicant argues that the Judge erred in finding that SOR ¶¶ 1.f and 1.g were duplicative of the two credit card debts that she resolved against him. Though acknowledging that the evidence presented at the hearing about these debts was in many respects confusing, he argues that 1.f and 1.g were not credit card expenditures but, rather, unrelated revolving lines of credit.

We have considered Applicant's argument in light of the record as a whole. The Judge's challenged finding is sustainable on this record. However, even if the Judge erred in this finding, we fail to see how it worked to Applicant's detriment. The Judge did not attribute security concerns to 1.f and 1.g, and she made no reference to them in her analysis, except to opine that they fell within mitigating condition 20(e). Moreover, she entered favorable formal findings for these two debts. Accordingly, the Judge's adverse decision did not rely on the debts alleged in 1.f and 1.g to any extent. Even if the Judge erred in finding them to be duplicative of the credit cards, the error did not contribute to the overall adverse decision and, therefore, was harmless. *See, e.g.*, ISCR Case No. 14-03601 at 3 (App. Bd. Jul. 1, 2015). The material findings upon which the Judge based her decision were 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. *See* ISCR Case No. 14-04226 at 3 (App. Bd. Aug. 18, 2015).

Applicant contends that the two credit card debts do not constitute a history of failing to pay debt. We construe this as an argument that the Judge's findings do not support her conclusion that Applicant's financial problems raise security concerns. 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. 14-06653 at 3 (App. Bd. Nov. 18, 2016). A single debt can be sufficient to raise Guideline F security concerns. *See, e.g.*, ISCR Case No. 14-05366 at 3 (App. Bd. Feb. 5, 2016). In the case before us, the debts at issue are contained in Applicant's credit reports (*see* GE 4 at 11, cited in n.3., for example), and Applicant testified about them as well. He stated that he probably used the card alleged in 1.d for the purchase of household goods (Tr. at 143), and he acknowledged owing both debts.⁴ The Judge found that these credit card debts, alongside the cable bill, had been delinquent for several years.

The Judge's findings about the credit cards and the cable bill support her conclusion that Applicant had been unable or unwilling to address his debts. They also support her conclusion that he has a history of failing to pay debt, in that debts that have remained unpaid over a course of years can properly be characterized as a history. *See, e.g.*, ISCR Case No. 15-02477 at 3 (App. Bd. Nov. 23, 2016) (Debts unresolved in the years since the applicant's previous clearance investigation can reasonably be characterized as a history). Applicant's arguments on appeal are not sufficient to rebut the presumption of nexus between Applicant's financial problems and concerns that he is deficient in the judgment and reliability required for access to classified information.

⁴Department Counsel questioned Applicant about 1.c: "And similar to the debt at [1.d] . . . that is a debt that you owed and that went delinquent during the time frame when you were having financial difficulties? [Applicant]: yes." Tr. at 146.

Applicant contends that his character evidence was overwhelming but that the Judge improperly discounted it in light of evidence such as his delinquent tax returns, among other things. As stated above, the SOR did not allege Applicant's tax problems. Department Counsel moved to amend the SOR to include an allegation that Applicant failed to file his state and Federal tax returns, but the Judge denied the motion. Decision at 2-3. However, the Judge noted that conduct not alleged in an SOR can be considered for certain limited purposes, such as evaluating an applicant's case for mitigation and performing a whole-person analysis, citing to, *inter alia*, ISCR Case No. 09-07219 at 5 (App. Bd. Sep. 27, 2012). Decision at 5, n.4. The Judge's reliance on the cited case was proper, and she limited her discussion of the tax delinquencies to the whole-person analysis of the decision. We find no error in the Judge's treatment of Applicant's failure to have filed tax returns. Applicant's appeal brief, viewed as a whole, consists in large measure of a disagreement with the Judge's weighing of the evidence, which is not enough to show that the Judge did so in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-02326 at 5 (App. Bd. Oct. 14, 2016).

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, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information 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