

KEYWORD: Guideline F

DIGEST: We cannot consider new evidence. Under Guideline F, a Judge should examine the extent to which an applicant’s financial problems impugn his judgment and reliability. Applicant did not rebut the presumption that the Judge considered all of the evidence. We have no authority to grant an interim, conditional, or probationary clearance. Adverse decision affirmed.

CASE NO: 15-01737.a1

DATE: 02/14/2017

DATE: February 14, 2017

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 15-01737
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**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 October 19, 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 November 18, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge David M. White denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether his financial condition raises security concerns, whether the Judge failed to consider all of the evidence, and whether the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Applicant was commissioned as a military officer in 1983, serving on active duty until 1986. At that time he entered the Reserves, returning to active duty status in 2000. He retired from the military in the grade of O-6.

Applicant's SOR lists several delinquent debts, including mortgage debts on his current residence and a former one. Applicant's current residence was purchased by means of a VA loan in 2005. Four years later he stopped making payments because he was experiencing "financial challenges," such as his wife's unemployment, education expenses for his children, and payments on a former residence. Decision at 3. He sought a loan modification as a means of staving off foreclosure, all the while continuing to live in the house without making loan payments. The lender approved a series of three monthly trial payments of about \$3,400. Applicant provided no evidence that he had made payments or was able to do so. The SOR alleges delinquent first and second mortgages on this house, and Applicant provided no evidence of resolution.

The SOR also alleges a delinquent first mortgage on Applicant's former residence in another state. Applicant stopped making payments on this loan in early 2013, entering into a repayment agreement in late 2015. He provided evidence of one payment under this agreement. The outstanding balance of the loan has increased since Applicant made that payment. Finally, the SOR alleges a charged-off account in an amount of about \$6,500. Applicant had opened the account in 2006 and stopped making payments in 2011. He made a payment of \$50, but the amount of the debt has increased to nearly \$9,800.

Applicant provided no evidence of his current income or budget, financial counseling, savings or investments, or other indicia of financial responsibility. He did not supply evidence regarding the quality of his duty performance, his level of responsibility at work, or a track record concerning the handling of sensitive matters.

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

The Judge concluded that Applicant's financial circumstances raised two disqualifying conditions: 19(a)<sup>1</sup> and (c).<sup>2</sup> He noted evidence that Applicant is seriously delinquent in three mortgage loans as well as in the consumer loan referenced above. He stated that these delinquencies

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<sup>1</sup>Directive, Enclosure 2 ¶ 19(a): "inability or unwillingness to satisfy debts[.]"

<sup>2</sup>Directive, Enclosure 2 ¶ 19(c): "a history of noet meeting financial obligations[.]"

occurred despite Applicant's continued employment. In evaluating Applicant's case for mitigation, the Judge cited to evidence of the repayment plans, noting, however, that Applicant provided little evidence that he would be able to make these payments. In the whole-person analysis, the Judge stated that Applicant's financial problems were due to his own choices and that Applicant had offered little evidence of financial counseling, rehabilitation, improved judgment, or responsible conduct.

## **Discussion**

Applicant argues that he is not a risk to national security, devoting a substantial portion of his brief to denying that he is susceptible to bribery. In doing so, he makes assertions that are outside the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. We construe Applicant's argument as contending that his financial problems do not raise security concerns.

The concern under Guideline F is not simply that an applicant might be tempted to compromise classified information in exchange for money with which to pay his debts. A Judge should also consider the extent to which an applicant's circumstances cast doubt upon his judgment, self-control, and other characteristics essential to protecting national security information. This obligation is rooted in the language of the Directive, which states that failure to meet financial obligations may indicate unwillingness to abide by rules and regulations, thereby raising questions about an applicant's ability to protect classified information. Directive, Enclosure 2 ¶ 18. *See* ISCR Case No. 12-09719 at 2-3 (App. Bd. Apr. 6, 2016).

In the case before us, the Judge's unchallenged findings that Applicant has been delinquent in his debts for several years despite having been fully employed and that there is little evidence of circumstances that would explain such delinquencies are sufficient to raise concerns that Applicant lacks the requisite judgment and self-control. These findings support the Judge's application of the disqualifying conditions listed above. Applicant's brief discloses no reason to disturb the Judge's conclusion the evidence raises security concerns under Guideline F.

Applicant cites to his claim in his Answer to the SOR that one of his debts had been sold to other creditors, arguing that this made it difficult for him to know whom he should pay. He also cites to his military service. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 15-02854 at 2 (App. Bd. Nov. 22, 2016). Neither has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06686 at 2 (App. Bd. Apr. 27, 2016).

Applicant requests that, if we are not able to affirm the Judge's decision, we grant him an interim clearance. However, we have no authority to grant an interim, conditional, or probationary clearance. *See, e.g.*, ISCR Case No. 14-04289 at 2 (App. Bd. Sep. 9, 2015).

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 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