

KEYWORD: Guideline F

DIGEST: Applicant's SOR lists several delinquent debts, for such things as two mortgage loans, student loan accounts, an auto loan, and a judgment. These debts total over \$200,000. Adverse decision affirmed.

CASENO: 15-02900.a1

DATE: 11/09/2018

DATE: November 9, 2018

In Re:

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Applicant for Security Clearance

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) ISCR Case No. 15-02900  
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**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 30, 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 hearing. On August 21, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Nichole L. Noel 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, we affirm.

### **The Judge’s Findings of Fact**

Applicant has worked for his current employer since 2007. He was first granted a clearance in 2005 and completed his most recent security clearance application (SCA) in 2012. Applicant’s SOR lists several delinquent debts, for such things as two mortgage loans, student loan accounts, an auto loan, and a judgment. These debts total over \$200,000. Applicant attributed his financial problems to the cost of maintaining his former residence and to the dissolution of his master’s degree program. The former residence had experienced storm damage, repairs to which harmed Applicant’s financial situation. Applicant testified that when his master’s program was dissolved he was transferred to another program. He does not know why he stopped paying his student loans.

Applicant stated that he overextended himself when he purchased the former home in 2005, as well as when he entered graduate school, and when he purchased a vehicle. He stopped paying on the vehicle in 2011 and on the mortgages on his house in 2012. During this time he had other accounts go into collection, including medical expenses, debts to a local government, and a consumer credit account.

By the close of the record, Applicant had resolved the judgment against him and the debt owed on his vehicle. His lender also cancelled the remaining debt on one of the mortgages. His claim that both mortgages were forgiven is not supported by the evidence. Creditors also forgave two student loans. Applicant’s contention that a third student loan was included is not supported by the evidence. Applicant disputed some of his delinquent debts but did not corroborate the basis for these disputes.

Applicant has received the financial counseling that is a prerequisite for filing for bankruptcy. He currently makes about \$133,000 a year and has about \$3,000 in disposable income each month as well as about \$20,000 in retirement savings. Applicant’s credit report discloses other accounts that became delinquent since the issuance of the SOR.

### **The Judge’s Analysis**

The Judge noted that events beyond Applicant's control had an affect on his financial condition. However, she concluded that the debts were largely caused by Applicant having overextended his spending. She acknowledged that he had resolved two of his debts, and she cited to evidence that two creditors forgave debts. She stated, however, that these instances of debt forgiveness did not appear to have been in response to Applicant's efforts. She also noted evidence that Applicant has acquired additional delinquent debts in recent years despite his rather high salary. On the whole, the Judge concluded that the favorable evidence in the record was not enough to mitigate the concerns arising from his remaining delinquent debts, including a second mortgage, a student loan that had not been forgiven, and other various accounts.

## **Discussion**

Applicant contends that the Judge did not consider favorable record evidence, citing to his efforts at debt resolution, circumstances outside his control that impaired his financial health, and evidence of changed behavior, such as receipt of debt counseling and his financial stability. Applicant argues that the Judge failed to consider that he had properly claimed the amounts of the forgiven debts on his tax returns.

We have evaluated Applicant's appeal brief in light of the entirety of the record evidence. We conclude that the Judge's findings and analysis constitute a reasonable interpretation of the evidence that was before her. Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 17-02145 at 3 (App. Bd. Sep. 10, 2018). 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. 17-02463 at 2 (App. Bd. Sep. 10, 2018).

Applicant has submitted a Hearing Office case in support of his appeal. We give due consideration to this case. However, each case must be decided upon its own merits. Directive, Encl. 2, App. A ¶ 2(b). Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. *See, e.g.*, ISCR Case No. 17-02145 at 3.

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). As the Judge noted, failure to meet financial obligations may indicate poor self-control, lack of judgment, or an unwillingness to follow rules and regulations. Decision at 4, quoting Directive, Encl. 2, App. A ¶ 18. The Judge's adverse 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 the national security."

**Order**

The Decision is **AFFIRMED**.

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: James F. Duffy  
James F. Duffy  
Administrative Judge  
Member, Appeal Board

Signed: Charles C. Hale  
Charles C. Hale  
Administrative Judge  
Member, Appeal Board