

KEYWORD: Guideline F

DIGEST: As the Judge noted, Applicant lost some mitigating credit because her student loan was being paid through garnishment. See, e.g., ISCR Case No. 08-06058 for the proposition that satisfaction of a debt through the involuntary establishment of a garnishment is not the same as, or similar to, a good-faith initiation of repayment by the debtor. Moreover, even if an applicant paid a debt or is making payments on a debt, a Judge may still consider the circumstances underlying the debt as well as any previous actions or lapses to resolve the debt for what they reveal about the applicant's worthiness for a clearance. Adverse decision affirmed.

CASENO: 15-02957.a1

DATE: 02/17/2017

DATE: February 17, 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 November 16, 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 September 12, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey 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 the Judge’s decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact**

Applicant, who is 35 years old, has worked for various Federal contractors since 2008. She is not married and has a three-year-old child.

The SOR alleged that Applicant had three delinquent student loans totaling about \$42,000. She acknowledged that she was delinquent on her student loans from 2004-2008 when she had an annual income of about \$40,000. Between 2008 and 2013, she completed a student loan rehabilitation program and was caught up on those loans. In 2012, her child was born with medical problems, she went on seven months of unpaid leave, and she again became delinquent on her student loans. In early 2013, she returned to employment with an annual salary of about \$85,000. She conceded that she was “being immature and not being responsible” in the payment of her student loans. Decision at 3, citing Tr. at 29. She provided a U.S. Government Wage Garnishment Order submitted to her employer seeking payment of a debt from the U.S. Department of Education for about \$23,000. She was scheduled to have about \$400 garnished from her pay every two weeks. She said all of her student loans are now current.

The other six debts in the SOR total less than \$3,000. She successfully resolved or removed two debts from her credit report. She disputed one debt, but did not provide the dispute letter. The remaining three debts involve tickets owed to a governmental entity. In her response to the SOR, she said she paid two of the tickets and planned to pay the third. At the hearing, she said her car was stolen in 2013, and the tickets were accrued then. She said she disputed her responsibility for the tickets. She claimed she checked with the governmental entity and the three tickets are not associated with her vehicle. The three tickets are not reflected on her two most recent credit reports.

### **The Judge’s Analysis**

The Judge concluded that she presented important mitigating evidence, such as information about her child’s medical problems and her underemployment, but neither provided specifics about how those circumstances adversely affected her finances nor established that she acted reasonably under the circumstances. Two of the alleged student loans were determined to be duplicates of the

third larger student loan of about \$23,000 and the two duplicate debts were found in Applicant's favor. She lost some mitigating credit because her student loan is apparently being paid through garnishment of her pay. She is not credited with mitigating the student loan because she did not provide a current summary or history of payments. She was credited with mitigating two other debts. The remaining debts that she disputed were not mitigated because she did not provide documentation substantiating the basis of the disputes. She cannot be credited with mitigating the debts that fell off her credit report. Insufficient evidence was presented to show why she was unable to make greater progress in resolving more of her debts and to establish that her financial problems are being resolved, are under control, and will not recur.

## Discussion

In the appeal brief, Applicant asserts that the unfavorable clearance decision was in error because she provided the "garnishment agreement"<sup>1</sup> for the student loan and that document clearly states the date payments began. She contends that the account would be "current" due to the garnishment, and it was unclear what further information is required. She did not challenge the Judge's conclusion that she did not provide a current summary or history of payments regarding the student loan. As the Judge noted, Applicant lost some mitigating credit because her student loan was being paid through garnishment. *See, e.g.*, ISCR Case No. 08-06058 at 6 (App. Bd. Sep. 21, 2009) for the proposition that satisfaction of a debt through the involuntary establishment of a garnishment is not the same as, or similar to, a good-faith initiation of repayment by the debtor. Moreover, even if an applicant paid a debt or is making payments on a debt, a Judge may still consider the circumstances underlying the debt as well as any previous actions or lapses to resolve the debt for what they reveal about the applicant's worthiness for a clearance. *See, e.g.*, ISCR Case No. 14-02394 at 3 (App. Bd. Aug. 17, 2015). In essence, Applicant's arguments amounts to a disagreement with the Judge's weighing of the evidence, which is not enough to show the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *Id.* at 4.

Applicant also contends that all of the debts in question were either paid or removed from her credit report and that it was unfair to deny her a security clearance when she displayed financial responsibility. As the Board has previously noted there is more than one plausible explanation for the absence of debts from a credit report, such as the removal of debts due to the passage of time, and the absence of unsatisfied debts from an applicant's credit report does not extenuate or mitigate an overall history of financial difficulties or constitute evidence of financial reform or rehabilitation. *See, e.g.*, ISCR Case No. 01-04425 at 3-4 (App. Bd. May 17, 2002) and ISCR Case No. 03-05197 at 3 (App. Bd. Oct. 14, 2004). At the hearing, the Judge explained to Applicant the importance of presenting documentation to substantiate the basis for disputing any debts (Tr. at 41- 42) and left the record of the proceeding open for about three months for Applicant to present additional

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<sup>1</sup> Applicant's Exhibit E is not entitled as an "agreement" but as "United States Government Wage Garnishment Order (SF-329B)."

documentation. While Applicant submitted post-hearing documents, she did not present documents to substantiate the basis for disputing any of the debts.<sup>2</sup> Applicant failed to establish that the Judge erred in his analysis of the evidence.

Applicant also requests that her case be reopened and that she be given a “request” and “clear expectations” of the type of information to be presented. She is asking for a remedy not available to her. The Appeal Board is only authorized to remand a case to correct an identified error. Directive ¶ E3.1.33.2. A request for a remand so Applicant can present new evidence does not constitute the correction of an identified error. “It is well settled that ‘absent a showing that an applicant was denied a reasonable opportunity to prepare for the hearing or was denied a reasonable opportunity to present evidence on his or her behalf, an applicant is not entitled to receive a new hearing just so the applicant can have another chance to present his or her case.’” ISCR Case No. 14-03347 at 3 (App. Bd. May 27, 2016). In this case, Applicant has not made a prima facie showing that she was denied any due process rights. *See also*, ISCR Case 00-0250 at 4 (App. Bd. Feb. 13, 2001) (“If the Board were to grant Applicant’s request for a new hearing or allow her to submit new evidence in this case, then the Board would be giving her special treatment and denying other, similarly-situated applicants of their right to receive the fair, impartial, and even-handed application of Executive Order 10865 and the Directive.”)

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, 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

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<sup>2</sup> In the appeal, Applicant noted DoD obtained her credit reports the were admitted into the record and stated that she did not know she needed to submit another credit report. At that hearing, however, the Judge asked her to submit a credit report from all three credit reporting bureaus and she responded, “Okay.” Tr. at 41.

James E. Moody  
Administrative Judge  
Member, Appeal Board

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