

KEYWORD: Guideline E; Guideline F; Guideline J

DIGEST: Applicant failed to present sufficient evidence to establish that he paid certain debts or had a reasonable basis to dispute others. A credit report, in and of itself, may not be sufficient to meet an applicant’s burden of persuasion as to mitigation, insofar as it provides little evidence regarding the underlying circumstances of the debt. Moreover, the fact that a debt no longer appears on a credit report does not establish a meaningful, independent evidence as to the disposition of the debt. Debts may fall off credit reports merely due to the passage of time. Adverse decision affirmed.

CASENO: 16-01338.a1

DATE: 07/13/2018

DATE: July 13, 2018

In Re:)
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Applicant for Security Clearance)
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ISCR Case No. 16-01338

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 24, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct), Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On April 3, 2018, after considering the record, Administrative Judge Noreen A. Lynch 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. The Judge’s favorable findings under Guidelines J and E are not at issue on appeal. Consistent with the following, we affirm.

The Judge’s Pertinent Findings of Fact and Analysis

Applicant is a 36-year-old employee of a defense contractor. He is single, has four children, and believes he previously held a position of trust for about five years. He has a cohabitant with whom he shares household expenses. He pays child support for his children.

The SOR alleges that he has 16 delinquent debts totaling about \$10,000. These include a state tax lien for about \$3,200, medical accounts, and parking tickets. The Judge found in favor of Applicant on a child support debt that Department Counsel withdrew and against him on the remaining debts. He was unemployed for about three months before his current job. When interviewed, he was unaware of many of the debts.

Applicant denied the state tax lien, but did not provide any supporting documentation. It is still reflected in a 2017 credit report, and he indicated that he has not been in contact with that state. He denied some of the debts and claimed others were resolved or removed from his credit report. In a post-hearing submission, he provided “portions of his 2018 credit bureau report” that reflect he pays many accounts as agreed. Decision at 4. “Also, his 2017 credit bureau report (GX 5) does not reflect any delinquent accounts beyond the state tax lien.” *Id.*

Applicant did not establish a link between his unemployment and many of his delinquent debts. He did not provide documentation to support his claims that he paid certain debts or that he disputed other debts that were removed from his credit reports. More specifically,

The fact that accounts are removed is not sufficient mitigation. Applicant was given an opportunity to provide information after the hearing. He supplied portions of a credit report from 2018 that show he is paying other accounts as agreed, but it is not possible to decipher if he actually disputed the other accounts.¹

Discussion

¹ Decision at 7.

Applicant provided a credit report in his appeal brief that post-dates the Judge's decision. The Appeal Board is prohibited from considering such new evidence on appeal. Directive ¶ E3.1.29.

In his appeal brief, Applicant contends that the Judge did not consider all of the evidence. He argues that, based on the "credit report, that I filed as evidence," he no longer has any "negative inquiries."² Appeal Brief at 1. He also states many debts have been paid in full or disputed as not being his debts. He further stated "one debt in mention has been paid," but we do not know what debt he is referencing. *Id.*

In the decision, the Judge correctly noted that Applicant only submitted a portion of a credit report in his post-hearing submission. It is understandable that a Judge may give less weight to an incomplete document, such as a credit report, submitted into evidence. We also note that the partial credit report reflects a charged-off debt for \$803 that had a date of first delinquency of July 2017 and was not alleged in the SOR. Furthermore the Judge's conclusion that Applicant failed to present sufficient evidence to establish that he paid certain debts or had a reasonable basis to dispute others is sustainable. As we have previously stated, a credit report, in and of itself, may not be sufficient to meet an applicant's burden of persuasion as to mitigation, insofar as it provides little evidence regarding the underlying circumstances of the debt. Moreover, the fact that a debt no longer appears on a credit report does not establish a meaningful, independent evidence as to the disposition of the debt. *See, e.g.*, ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015). For example, debts may fall off credit reports merely due to the passage of time. *See, e.g.*, ISCR Case No. 03-20327 at 6 (App. Bd. Oct 26, 2006). Applicant's arguments are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015).

Applicant has not identified any harmful error in the Judge's decision. 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, 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."

² The Board construes Applicant's reference to a "credit report, that I filed as evidence," as referring to the partial credit report in his post-hearing submission (AX D) rather than the credit report attached to his appeal brief that we cannot consider. Directive ¶ E3.1.29.

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