KEYWORD: Guideline F

DIGEST: Applicant has not made any voluntary payments on the alleged debts. The tax lien was resolved through a tax levy of his military retirement pay. The satisfaction of a debt through the involuntary establishment of a garnishment or a tax levy is not the same as, or similar to, a good-faith initiation of repayment by the debtor. The timing of Applicant's actions to resolve the debts is an important factor to consider. The Judge noted that Applicant's financial problems have existed for many years. In his response to the FORM, Applicant stated that he started to contact creditors to make arrangements to repay the debts in June 2017, which was five months after issuance of the SOR. Favorable decision reversed.

CASENO: 16-03122.a1

DATE: 08/16/2018

DATE: August 17, 2018

In Re:	)	
	)	
----------	)	ISCR Case No. 16-03122
	)	
	)	
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 January 6, 2017, 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 May 9, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Wilford H. Ross granted Applicant's request for a security clearance. Department Counsel appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issue on appeal: whether the Judge's favorable decision was arbitrary, capricious, or contrary to law. Consistent with the following, we reverse.

The Judge's Findings of Fact

Applicant, who is a 58-year-old military retiree, has been working for a defense contractor since 2014. The SOR alleged that Applicant had eight delinquent debts totaling about $39,000. In his response to the SOR, Applicant admitted each debt. In responding to Department Counsel's File of Relevant Material (FORM), Applicant stated:

> My debt has been accrued over several years of poor choices such as Gambling, bad investments, bad decision making, trying to afford what I could not, and trying to maintain a lifestyle that I thought would make others happy. This has been detrimental to me and has cost me greatly and has put me in the situation in which I find myself now.[1]

Applicant has "begun the process of consolidating his student loan debt" but provided no further information (SOR ¶ 1.a); was resolving through garnishment a debt arising from a repossessed vehicle (SOR ¶ 1.b); would pay a charged-off account pursuant to a settlement agreement starting in July 2017 (SOR ¶ 1.c); paid a tax lien through a tax levy on his military retirement pay (SOR ¶ 1.d); submitted evidence showing his bank would make the first payment on a past-due automobile loan in June 2017 (SOR ¶ 1.e); will try other means to contact the creditor of a repossessed vehicle after finding its number on a website was no longer in service (SOR ¶ 1.f); called the creditor of a charged-off account who hung up on him after advising it had nothing on him in its system (SOR ¶ 1.g); and provided no further information after stating he was told by a collection agency that the original creditor recalled a past-due telephone debt (SOR ¶ 1.h). The debt in SOR ¶ 1.h is not resolved, but the other debts are either resolved, being resolved, or good-faith efforts have been taken to resolve them. Applicant did not submit any character references or evidence regarding his job performance.

[1] Decision at 4, quoting from Applicant Exhibit A.

The Judge's Analysis

Although Applicant's financial problems have been in existence for many years, he is diligently trying to resolve them. He admits these problems are due to his own conduct. He is engaged in the time-consuming and frustrating process of following the debt through collection agencies to find the current holder. The tax lien has been resolved. He has met his burden of mitigating the security concerns. He has learned his lesson and is now financially stable.[2]

Discussion

There is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied,* 499 U.S. 905 (1991). The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate admitted or proven facts. The applicant has the burden of persuasion as to obtaining a favorable decision. Directive ¶ E3.1.15. The standard applicable in security clearance decisions "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). "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." Directive, Encl. 2 App. A ¶ 2(b).

The Appeal Board may reverse the Judge's decision to grant, deny, or revoke a security clearance if it is arbitrary, capricious, or contrary to law. Directive ¶¶ E3.1.32.3 and E3.1.33.3. In deciding whether the Judge's rulings or conclusions are erroneous, we will review the decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See* ISCR Case No. 14-02563 at 3-4 (App. Bd. Aug. 28, 2015).

Department Counsel contends that the record in this case does not support the Judge's favorable mitigation analysis. He argues that the Judge failed to consider important aspects of the case and that his decision runs counter to the weight of the record evidence. Department Counsel's arguments have merit.

Department Counsel states that Applicant has not made any voluntary payments on the alleged debts and points out the tax lien was resolved through a tax levy of his military retirement

[2] In the Formal Findings, the Judge found for Applicant on Paragraph 1 of the SOR, but against him on each of the subparagraphs. Given the Judge's conclusion that "Applicant did mitigate the security concern arising under the guideline" (Decision at 8), the adverse findings for each subparagraph was obviously a typographical error or administrative oversight.

pay. The satisfaction of a debt through the involuntary establishment of a garnishment or a tax levy is not the same as, or similar to, a good-faith initiation of repayment by the debtor. *See, e.g.*, ISCR Case No. 08-06058 at 6 (App. Bd. Sep. 21, 2009). Additionally, the timing of Applicant's actions to resolve the debts is an important factor to consider. The Judge noted that Applicant's financial problems have existed for many years. In his response to the FORM, Applicant stated that he started to contact creditors to make arrangements to repay the debts in June 2017, which was five months after issuance of the SOR.[3] As we stated in an earlier case,

> an applicant who begins to resolve debts only after an SOR placed him on notice that his clearance was in jeopardy may lack the judgment and self discipline to follow rules and regulations over time or when there is no immediate threat to his own interests.[4]

Taking action to resolve long-term delinquent debts well after the initiation of the security clearance process also undercuts a determination that such action constitutes a good-faith effort to resolve the delinquencies. *See, e.g.*, ISCR Case No. 15-03481 at 5 (App. Bd. Sep. 27, 2016). Furthermore, the Judge concluded that Applicant mitigated the security concerns arising from some debts by establishing repayment plans that were set to start in the near future. As we have previously stated, an intention to pay debts in the future is not a substitute for a track record of repayment or other responsible approaches. *See, e.g.*, ISCR Case No. 11-14570 at 3, n.3 (App. Bd. Oct. 23, 2013). Applicant's evidence falls far short of establishing a "good-faith" or meaningful track record of repayment of debts.

We conclude that the Judge's decision is arbitrary and capricious because it fails to consider important aspects of the case and runs contrary to the weight of the record evidence. Furthermore, we conclude that the record evidence, viewed as a whole, is not sufficient to mitigate the Government's security concerns under the *Egan* standard. The decision is not sustainable.

Order

The Decision is **REVERSED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

[3] Applicant actually said he started to contact "debtors" in June 2017. His use of the term "debtors" instead of "creditor" was obviously an error.

[4] ISCR Case No. 14-03358 at 4 (App. Bd. Oct. 9, 2015).

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

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