

KEYWORD: Guideline F

DIGEST: The Judge's material findings are consistent with the record that was before her. Even if an applicant has demonstrated debt payment, however, a Judge may still look to the underlying circumstances of the applicant's financial condition for what it reveals about his judgment and reliability. Adverse decision affirmed.

CASENO: 17-00085.a1

DATE: 03/16/2018

DATE: March 16, 2018

In Re:)	
)	
-----)	ISCR Case No. 17-00085
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Peter J. Cresci, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 13, 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 hearing. On November 28, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Gina L. Marine 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 findings contained errors and 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 been employed by a Defense contractor since 2015. His SOR alleges numerous delinquent debts, for credit card accounts, Federal student loans, a collection account, and a medical debt. In his SOR Answer, Applicant admitted each of these debts except the medical one. However, the Judge noted that this debt was established by Applicant’s credit reports.

Applicant resolved one of the debts, which was referenced in two separate allegations. He also claimed to have resolved, or to be in the process of resolving, other debts, including his student loans. However, he did not provide corroborating evidence of any such attempts at debt payment. The Judge noted Applicant’s claim that the medical debt actually belonged to his late father, for whom Applicant was named. Applicant did not provide documentary corroboration for his dispute or for his effort to resolve the debt.

Applicant was discharged in Chapter 7 bankruptcy in 2008. Applicant attributed the financial problems that led to this proceeding to his having lived beyond his means. He stated that the delinquent debts that arose after his bankruptcy were due to two periods of unemployment. Applicant currently makes about \$78,000 a year and, as of September 2017, his wife earns about \$53,000. Applicant’s wife handled the family finances until his security clearance application, at which point he took a more active role. Applicant has had no financial counseling.

Applicant’s job performance was rated “exceeding expectations” in 2016 and he was viewed as a “tremendous asset” to his employer. Decision at 4. He is active in church and community affairs.

The Judge’s Analysis

The Judge stated that Applicant had not demonstrated responsible action in regard to his debts. She stated that, without corroborating evidence, she could not conclude that he had made payments on his debts or that he had substantiated a reason to dispute the medical debt. She characterized Applicant as candid and sincere and acknowledged his excellent job performance. However, she concluded that he had not met his burden of persuasion as to mitigation.

Discussion

Applicant challenges some of the Judge's findings about his efforts at debt resolution. In doing so, he submits evidence from outside the record, which we cannot consider. Directive ¶ E3.1.29. The Judge's material findings are consistent with the record that was before her. Even if an applicant has demonstrated debt payment, however, a Judge may still look to the underlying circumstances of the applicant's financial condition for what it reveals about his judgment and reliability.¹ By the same token, a Judge may consider a paucity of mitigating evidence, including corroborating documentation, in evaluating whether the applicant has met his burden of persuasion. *See, e.g.*, ISCR Case No. 16-02246 at 2-3 (App. Bd. Dec. 8, 2017). Given evidence that Applicant acquired significant delinquent debt after having been discharged in Chapter 7 bankruptcy, and given the Judge's sustainable comments about a lack of corroboration regarding debt resolution, we find no reason to disturb her adverse 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."

¹For example, Applicant testified that he purchased three laptop computers, two of which stopped working. He stated that he stopped making payments, demanding that the seller fix the ones that did not work properly. Eventually the seller turned the account over to a debt collector. Tr. at 40. Applicant did not provide any documentation on this matter, although he apparently did not return the computers. Applicant Exhibit F is a payment plan that Applicant entered into with the debt collector for resolution of this debt. He entered into the plan after the date of the hearing. The Judge noted that he provided no evidence of payment under this plan. Decision at 2-3.

Order

The Decision is **AFFIRMED**.

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

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

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board