

KEYWORD: Guideline F

DIGEST: We conclude the challenged finding that Applicant’s child support arrearage had been resolved is erroneous. Applicant did not begin addressing his financial problems in earnest until after he had received the SOR. The Judge did not seriously address this, although we have long held that the timing of an applicant’s debt payments is a relevant matter in evaluating the applicant’s reliability and judgment. Favorable decision reversed.

CASENO: 17-00569.a1

DATE: 09/18/2018

DATE: September 18, 2018

In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel  
Allison Marie, Esq. Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 23, 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 February 5, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert Robinson Gales 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 failed to address important aspects of the record, thereby rendering it arbitrary, capricious, or contrary to law. Consistent with the following, we reverse.

### **The Judge’s Findings of Fact**

Applicant served in the Reserves of the U.S. military. He received an Honorable Discharge, despite several performance and disciplinary problems. He has attended college but does not hold a degree. Applicant has numerous delinquent debts: two home improvement loans for which he owes about \$43,500 and \$21,000; a student loan for about \$34,000; three credit card debts with an aggregate past-due balance of about \$15,000; a child support arrearage of over \$3,700; and a medical account of about \$600. In addition to these debts, Applicant had a house that was sold in a foreclosure sale.

The Judge found that Applicant’s debts were either paid or in the process of being resolved. He noted, for example, that there is no indication in Applicant’s credit reports of a deficiency from the sale of his home. He also noted that Applicant’s child support payments were covered by a garnishment order and that the arrearage had been satisfied because there had been no garnished payment reflected in the most recent account statement. He also found that Applicant’s other debts had been covered by payment plans with which he was compliant.

Applicant’s problems began when he lost his job in early 2013 as a result of a reduction in force. He interrupted his search for a new job because he needed to care for his mother during an illness. Therefore, he depleted his savings, and his debts got “out of hand.” Decision at 3. Applicant’s mother eventually passed away in September 2016. Applicant returned to work, reconnected with his creditors, established a budget, and began repaying his debts.

He did not submit a statement showing his monthly income and expenses, so it is difficult to determine if he has the financial ability to pay his current bills while addressing his delinquent debts. A recent credit report, however, showed no new delinquent accounts. Applicant has either resolved, or is in the process of resolving, his delinquent debts.

### **The Judge’s Analysis**

The Judge cited to events that were beyond Applicant's control, such as his unemployment and his mother's illness, that affected his finances. He concluded, however, that Applicant had demonstrated responsible action in regard to his debts by entering into repayment plans. He concluded that Applicant's problems were apparently under control and that his poor financial history does not cast doubt upon his current reliability, trustworthiness, and good judgment.

## **Discussion**

There is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9<sup>th</sup> 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, Enclosure 2 ¶ 2(b).

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, e.g.*, ISCR Case No. 14-02563 at 3-4 (App. Bd. Aug. 28, 2015).

Department Counsel challenges the Judge's finding that Applicant's child support arrearage had been resolved. We examine a Judge's findings to see if they are supported by substantial evidence, that is, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See, e.g.*, ISCR Case No. 17-00506 at 3 (App. Bd. Aug. 7, 2018).

The challenged finding was based upon a document that Applicant submitted in his Response to the File of Relevant Material (FORM). This document is a four-page printout that shows Applicant's child support payments going back to January 2014. This document was produced on August 11, 2017. The entry for each month discloses the amount that was withdrawn from Applicant's account in satisfaction of his obligation, except for August 2017. The entry for this month is blank. The Judge inferred from this that Applicant's arrearage was paid off, because no funds had been expended for August 2017. Department Counsel persuasively argues, however, that the reason that there was no payment recorded for August 2017 was that the transaction simply had not been processed at the time that the document in question was produced. This appears to be the case, insofar as this document clearly states that, as of the date it was generated, Applicant remained in arrears in the amount of \$1,010.95. Accordingly, we conclude the challenged finding that Applicant's child support arrearage had been resolved is erroneous.

Department Counsel also argues that the Judge's mitigation analysis failed to address significant aspects of the case; for example, Applicant's dilatory response to his bad debts. As Department Counsel observes, Applicant completed his security clearance application (SCA) in late 2015, disclosing his delinquent debts and promising to consolidate his debts and resolve them "soon." *See* Item 5, SCA, at 30-33. About ten months later, Applicant sat for his clearance interview. He acknowledged his debts when confronted with them, again promising that he would consolidate them and pay them off. Item 6, Interview Summary, at 9-12. Therefore, despite having formally acknowledged, and promised to pay off, his debts nearly a year before, Applicant disclosed to his interviewer no actual, concrete efforts at debt resolution. Indeed, as Department Counsel argues, Applicant did not begin addressing his financial problems in earnest until after he had received the SOR. The Judge did not seriously address this, although we have long held that the timing of an applicant's debt payments is a relevant matter in evaluating the applicant's reliability and judgment. *See, e.g.*, ISCR Case No. 12-01335 at 5 (App. Bd. Dec. 29, 2017). An applicant who begins to resolve financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. *See, e.g.*, ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018). A Judge is not required to discuss each and every piece of record evidence in making a decision, but a Judge cannot ignore, disregard, or fail to discuss significant record evidence that a reasonable person could expect to be taken into account in reaching a fair and reasoned decision. *See, e.g.*, ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). In the case before us, the timing of Applicant's payment plans is an example of such evidence. The Judge's failure to address the timing of Applicant's efforts at debt resolution impairs his overall favorable conclusion.

We are also persuaded by other things that Department Counsel has raised in his Appeal Brief. He argues, in effect, that the record does not support a conclusion that Applicant has established control over his debts. He notes, for example, that Applicant has made only a few payments of \$5 a month in the early stage of a rehabilitation plan for his student loan. As Department Counsel observes, a few payments of such a nominal amount, even if they are required to rehabilitate the loan for eventual resolution, do not show that Applicant has begun to address this debt in a meaningful way. Moreover, he has made regular minimal payments for each of the three credit card debts owed to the credit union but had demonstrated only sporadic efforts at other credit card debts owed to banks. Regarding one of them, for example, Department Counsel notes that Applicant had made payments in May and July 2017, each for \$25, with no evidence of further payment. The insufficiency of Applicant's mitigation evidence is underscored by the Judge's own comment that Applicant has provided no information about his income and expenses, leaving it difficult to determine if he will be able to follow through on his payment plan. Although an applicant is not required to be debt free or to pay off all his debts at once, he is required to show that he has a reasonable plan for resolving his debts with concomitant conduct so that they no longer cast doubt upon his judgment or reliability. *Id.* All in all, the record does not support a conclusion that Applicant has actually demonstrated a track record of debt payment or that his financial problems are under control.

Department Counsel argues that the Judge's whole-person analysis was erroneous. An appropriate whole-person analysis abides by the Directive's requirement that a case must be decided in light of the entirety of the evidence: "Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information" contained in the record. Directive ¶ 6.3. We find Department Counsel's argument to be persuasive. Given the extent of Applicant's delinquent debts and the relatively small amounts that he has actually remitted to his creditors, and given the timing of Applicant's efforts, we conclude that the record as a whole does not support the Judge's overall favorable decision. Although a clearance adjudication is not an effort to compel an applicant to pay his debts, it is an examination into the extent to which the applicant may be deficient in qualities essential to the protection of classified information. The record as a whole does not support the Judge's conclusion that Applicant has mitigated the concerns raised in his SOR in light of the standard set forth in *Egan* at 528. We conclude that the Judge failed to consider all of the relevant and material information in the case and issued a decision that ran contrary to the weight of the evidence. The Judge's favorable decision is not sustainable.

**Order**

The Decision is **REVERSED**.

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