

KEYWORD: Guideline F

DIGEST: A credit report, in and of itself, may not be sufficient to meet an applicant's burden of persuasion as to mitigation. The fact that a debt no longer appears on a credit report does not establish any 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: 17-00586.a1

DATE: 04/27/2018

DATE: April 27, 2018

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In Re:

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Applicant for Public Trust Position

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) ADP Case No. 17-00586  
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Patrick Cox, Personal Representative

The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On May 16, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness 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 February 5, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello denied Applicant’s request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Finding of Fact**

Applicant, who is 37 year old, has worked for his current employer since 2011. He served in the military from 1999 to 2003. He has two children from his first marriage. He has one child and two stepchildren from his current marriage. His wife does not work outside the home. The SOR alleged that Applicant had three delinquent debts totaling about \$15,000, including a student loan over \$13,000. In responding to the SOR, he admitted each of those debts.

From 2003 to 2005, Applicant attended college using the GI Bill and student loans. He testified that he was not making much money when his student loans became due and did not pay them. “He stated, ‘Student loans, in my opinion, were a bill that was always going to be there, so I never prioritized those.’” Decision at 2. He determined it was not necessary to pay them because they would neither be discharged in bankruptcy nor removed from his credit report. In the past, he received collection notices and arranged payment plans, but defaulted on those plans. In his 2015 security clearance application, he disclosed that his wages were being garnished for past-due student loans, but also indicated he had another past-due student loan that was not subject to the garnishment. In January 2017, he contacted the creditor of the student loan in SOR ¶ 1.a because he was unable to obtain a mortgage loan due to that delinquent student loan and other negative information on his credit report. His student loan was placed in a deferment status and an income-based payment plan was arranged. Under that payment plan, he is to make monthly payments of \$155 starting in March 2018. This debt was unresolved.

Applicant provided documentation that he paid a communications provider’s debt (SOR ¶ 1.b) in May 2017 that had been delinquent since 2014. In background interviews in 2011 and 2015, he was confronted about another debt (SOR ¶ 1.c) that he was unable to identify, but he admitted this debt in responding to the SOR. He testified that he paid it in early 2017; however, he did not provide documentary proof of its resolution other than it no longer appears on a recent credit report. In a post-hearing email, he stated the debt was purchased by another creditor and its collection agency had no record of it. The debt in SOR ¶ 1.c was unresolved.

Applicant attributed his financial problems to his first marriage when things involving his finances occurred without his knowledge. In 2017, he purchased a house, a used car, and a motorcycle. He has not received financial counseling.

### **The Judge's Analysis**

Applicant did not act responsibly under the circumstances. He failed to take action on his student loan until he wanted to obtain a mortgage loan. He also failed to take timely action on the two other debts. One of those debts was paid when he attempted to secure the mortgage and the other, which dates back to 2010, cannot be found by the creditor. After noting he disregarded his legal obligations and failed to follow through on his promises, the Judge indicated that she was unable to conclude his financial problems are unlikely to recur and that his behavior casts doubt on his current reliability, trustworthiness, and good judgment. The Judge found against Applicant on the three alleged debts.

### **Discussion**

In his appeal brief, Applicant argues that he is in good standing with all of his creditors. He asserts that a credit report reflects that the debts in SOR ¶¶ 1.b and 1.c were satisfied as of January 2017. We note, however, that he did not identify any record evidence that specifically challenges the Judge's findings that the debt in SOR ¶ 1.b was paid in May 2017 and the debt in SOR ¶ 1.c is not reflected on his recent credit report. He also contends that his student loans have been in good standing since 2017, that he setup a monthly payment plan that was to begin in March 2018, and that he would make automatic payments towards that plan until the students loans were satisfied. We do not find those arguments persuasive.

We note that a credit report, in and of itself, may not be sufficient to meet an applicant's burden of persuasion as to mitigation. The fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. *See, e.g.*, ADP Case No. 14-02206 at 3 (App. Bd. Oct. 15, 2015) and ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015). Debts may fall off credit reports merely due to the passage of time. *See, e.g.*, ADP Case No. 07-13041 at 5 (App. Bd. Sep. 19, 2008). Moreover, although Applicant has established that he setup a repayment plan for his student loans and that he paid one of the debts, the Judge may still consider the circumstances underlying those debts for what they may reveal about his worthiness for a clearance. *See, e.g.*, ADP 14-02206, *supra*, at 2-3. In this case, the Judge adverse decision is largely based on her determination that Applicant failed to act responsibly under the circumstances by repeatedly ignoring his obligations to repay his debts. We find no reason to disturb the Judge's findings or conclusions.

We also note that Applicant's arguments about the resolution of his debts and the Judge's whole-person assessment amount to a disagreement with the Judge's weighing of the evidence. A party's disagreement with the Judge's weighing of the evidence, or the ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ADP

Case No. 16-01251 at 2 (App. Bd. Jun. 7, 2017). Applicant further argues that the Judge based her decision only on the three debts alleged in the SOR. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *Id.*

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. The standard applicable to trustworthiness cases is that set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) regarding security clearances: such a determination “. . . may be granted only when ‘clearly consistent with the interests of the national security.’” *Id.* at 2. *See also Kaplan v. Conyers*, 733 F.3d 1148 (Fed. Cir. 2013), *cert. denied*.

### **Order**

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra’anan

Michael Y. 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