

KEYWORD: Guideline F

DIGEST: Applicant was discharged in Chapter 7 bankruptcy in 2010. He filed for Chapter 13 bankruptcy protection in 2014, insofar as he was behind in his bills. This petition was dismissed when a layoff rendered him unable to comply with the payment plan. Applicant's SOR lists several delinquent debts. Except for a small debt, none of Applicant's delinquent financial obligations have been resolved. Adverse decision affirmed.

CASENO: 17-00973.a1

DATE: 04/04/2018

DATE: April 4, 2018

In Re:)	
)	
-----)	ISCR Case No. 17-00973
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

J. Paul Zimmerman, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 3, 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 December 19, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello 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. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant has worked for his current employer for two years. His SOR alleged several delinquent debts that Applicant attributed to periods of unemployment and to medical problems. His unemployment was due to such things as losing a job because he was not adequately trained; a layoff following sale of the company for which he worked; not being chosen for a permanent position after working in a temporary assignment; job termination due to excessive telephone usage; and termination due to excessive absences and tardiness. The Judge noted that the adverse information described above was not alleged in the SOR. She stated that she would consider it only for questions of mitigation, credibility, and the whole-person factors.

Applicant was discharged in Chapter 7 bankruptcy in 2010, relieving him of about \$13,500 in debt. He filed for Chapter 13 bankruptcy protection in 2014, insofar as he was behind in his bills. This petition was dismissed when a layoff rendered him unable to comply with the payment plan. Applicant’s SOR lists several delinquent debts, for such things as a repossessed vehicle; a judgment resulting from a broken lease; medical expenses; and an unpaid loan for a vehicle. Except for a small debt, none of Applicant’s delinquent financial obligations have been resolved.

Applicant hired a credit repair service, but he subsequently discontinued using it. An attorney submitted a letter stating that this service did not appear to have improved Applicant’s financial health. Applicant is following the advice of this attorney by planning to file Chapter 7 bankruptcy. Applicant has received financial counseling pursuant to his bankruptcy filing. He lives with his sister and tries to save money. He has no new unpaid debts.

The Judge’s Analysis

The Judge noted that some of Applicant’s unemployment was due to circumstances that were outside his control. However, she concluded that he had not demonstrated responsible action in regard to his debts, noting that he had only resolved a rather small one. She found no evidence of a good-faith effort to pay debts and stated that he did not provide documentary evidence to

corroborate his claim that one of his debts had been paid by insurance. In the whole-person analysis, the Judge stated, among other things, that Applicant had not shown a track record of debt payment.

Discussion

Applicant contends that he has not been living beyond his means. He states that most of his debts are actually old, and he argues that the Judge did not properly consider his periods of unemployment. He cites to evidence that he lives within his means. Applicant contends that the Judge did not extend sufficient weight to the circumstances that were outside his control. He states that there is no evidence in the record that he is deceptive or lacking in trustworthiness.

The Judge did not conclude that Applicant's problems were due to his living beyond his means. *See* Directive, Encl. 2, App. A ¶ 19(e). The disqualifying conditions that she found raised by his circumstances were 19(a), inability to satisfy debts, and 19(c), a history of not meeting financial obligations, which are supported by her unchallenged findings of fact. Directive, Encl. 2, App. A ¶ 19(a), (c). Moreover, the Directive presumes that there is a nexus between admitted or proved circumstances under any of the Guidelines and an applicant's eligibility for a clearance. *See, e.g.,* ISCR Case No. 15-06731 at 3 (App. Bd. Dec. 6, 2017). Given the totality of the evidence, the Judge's treatment of the disqualifying conditions is consistent with the record that was before her.

We note Applicant's argument that he is trustworthy and that he has not attempted to deceive anyone, either in his clearance application or at the hearing. The Judge did not make a finding that Applicant was not truthful or candid, although she did note circumstances underlying some of the job losses that were attributable to misconduct. Her overall decision rested on findings that Applicant has had delinquent debts for many years and has not shown responsible action in regard to them. It is not inconsistent for a Judge to find that an applicant's presentation is believable yet conclude that his evidence is not sufficient to mitigate the concerns arising from his security significant conduct. *See, e.g.,* ISCR Case No. 14-05795 at 2 (App. Bd. Apr. 26, 2016). Applicant's argument does not establish error by the Judge.

Applicant argues that the Judge did not consider, or that she mis-weighed, evidence of the circumstances that were outside his control that had an impact on his finances. The Judge made findings about these matters, and she addressed them in her analysis. However, she also noted evidence that some of Applicant's job losses were due to his own misconduct. In their totality, Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record or to demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 17-00257 at 3 (App. Bd. Dec. 7, 2017).

We note Applicant's argument that at least some of his debts are old. However, an applicant's ongoing, unpaid debts can evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions. *See, e.g.,* ISCR Case No. 15-08779 at 3 (App. Bd. Nov. 3, 2017).

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.”

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