

KEYWORD: Guideline F

DIGEST: Even though the Judge may have erred in not providing more detailed findings as well as and a more extensive analysis about the medical debts, such errors were harmless because they did not likely affect the outcome of the case in light of the other unresolved debts. Adverse decision affirmed.

CASENO: 17-01409.a1

DATE: 10/19/2018

DATE: October 19, 2018

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) ) ) ) )	ISCR Case No. 17-01409
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**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 May 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 hearing. On August 1, 2018, after the hearing, Administrative Judge Richard A. Cefola denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant had 11 delinquent debts. The Judge found in favor of Applicant on six of the alleged debts and against him on the remaining five debts. The Judge’s favorable SOR findings have not been raised as an issue on appeal and are not discussed further below. Applicant raised the following issues in his appeal: whether the Judge erred in his findings of fact and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the adverse decision.

### **The Judge’s Finding of Fact and Analysis**

Applicant is a 48-year-old employee of a defense contractor. He retired from the military after 20 years of active duty. His wife handles their finances and testified on his behalf.

Applicant admitted five past-due debts totaling about \$12,000. One of those debts for about \$10,300 arose from an automobile repossession. His wife stated that they would address the delinquent debts but, despite having more than two months to do so, they submitted no evidence to show that they had done anything to settle them.

Applicant’s financial problems are ongoing. Although he has addressed other debts, he has not demonstrated that future financial problems are unlikely. He failed to mitigate the financial security concerns.

### **Discussion**

In his appeal brief, Applicant contends that he paid two of the debts and, in support of these claims, references a letter and a receipt from the creditors that are not contained in the record and that post-date the closing of the record.<sup>1</sup> He also states in his brief that he and his wife are in the process of attempting to settle the debt arising from the repossessed vehicle. These contentions constitute new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.29.

Applicant further contends that he does not recall admitting two medical debts that total about \$922 and states that he was covered by military medical insurance. Applicant’s SOR response reflects that he admitted these debts, notes these debts are no longer listed on his credit report, and indicates he would submit any documentation regarding the debts that he could acquire. At the

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<sup>1</sup> In the decision, the Judge noted the record of the proceeding was left open until November 30, 2017. The documents that Applicant claims show the two debts were paid are supposedly dated December 27, 2017, and August 18, 2018.

hearing, his wife testified that she did not know how these medical debts arose and that her Tricare representative could not find anything about them. The Judge asked at the hearing whether a statement could be provided from the Tricare representative who looked into these debts. No such statement is in the record. In the appeal brief, Applicant references a letter from the military, which post-dates the close of the record, indicating there is no record of this debt. Even though the Judge may have erred in not providing more detailed findings as well as and a more extensive analysis about the medical debts, such errors were harmless because they did not likely affect the outcome of the case in light of the other unresolved debts. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013).

Applicant also argues that he has mitigated the security concerns arising from his delinquent debts. In doing so, he highlights his military record of 20 years, discusses the reasons for his financial problems, and argues he is adhering to good-faith efforts to repay his overdue creditors. However, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party's disagreement with the Judge's weighing of the evidence, or an 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 is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

Applicant has not identified any harmful error in the Judge's 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."

**Order**

The Decision is **AFFIRMED**.

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

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

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