

KEYWORD: Guideline F

DIGEST: Applicant contends the Judge did not fully investigate his financial situation. However, a Judge has no authority to act as an investigator in a security clearance adjudication. Any attempt by a Judge to serve as an investigator would conflict with his or her role as an impartial fact-finder. Adverse decision affirmed.

CASENO: 17-02852.a1

DATE: 06/13/2018

DATE: June 13, 2018

In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	
	)	

**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 August 24, 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 March 20, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Marc E. Curry 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 and Analysis**

Applicant has eight delinquent debts, including two state tax debts totaling about \$2,300 and five student loans totaling about \$50,000. His security clearance application lists two periods of unemployment, both for about three years. His most recent period of unemployment ended in the spring of 2015.

Applicant indicated he arranged a payment plan for a debt, but was unable to make the payments. In late 2017, Applicant consolidated his student loans and arranged a payment plan that provides for monthly payments of about \$20. “He contends that he is ‘vigorously working towards reducing and paying of [his] debt . . .,’ but provided no additional documentary proof.” Decision at 2, citing Applicant’s File of Relevant Material (FORM) response.

Applicant did not provided any details about his periods of unemployment or financial difficulties. No evidence was presented that Applicant received financial counseling or arranged a payment plan for the delinquent state tax debts. He receives partial credit under mitigating condition 20(d) for consolidating his student loans and developing a payment plan, but the first payment was not due until after his FORM response.<sup>1</sup> Applicant has not mitigated the financial security concerns.

### **Discussion**

In his appeal brief, Applicant made statements and submitted documents that were not previously provided to the Judge for consideration. Those statements and documents constitute new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.29.

Applicant contends the Judge did not fully investigate his financial situation. However, a Judge has no authority to act as an investigator in a security clearance adjudication. Any attempt

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<sup>1</sup> Directive, Encl. 2, App. A ¶ 20(d) states, “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts[.]”

by a Judge to serve as an investigator would conflict with his or her role as an impartial fact-finder. *See, e.g.*, ISCR Case No. 14-00434 at 3 (App. Bd. Jan. 20, 2015). A credit report in the record (FORM Item 4) establishes the alleged debts. *See, e.g.*, ISCR Case No. 08-012184 at 7 (App. Bd. Jan. 7, 2010) (It is well settled that adverse information in a credit report can normally meet the substantial evidence standard and the Government’s obligation under Directive ¶ E3.1.14 for establishing a controverted debt allegation). Once a controverted SOR allegation is proven, the burden shifted to Applicant to present evidence to rebut, explain, extenuate, or mitigate the established security concern, and he also had the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive ¶ E3.1.15.

Applicant also contends that he had provided proof of paying his debts and of having made repayment agreements. The Appeal Board has previously noted that it is reasonable for a Judge to expect applicants to present documentation about the resolution of specific debts. *See, e.g.*, ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). After reviewing the record in this case, the Board concludes that the Judge’s material findings about Applicant’s debts are based on substantial evidence or constitute reasonable conclusions or inferences that could be drawn from the record. *Id.* In his response to the SOR, Applicant denied each of the debts and did not provide any narrative comments or documents regarding the debts. In his FORM response, Applicant provided a narrative statement about his efforts to resolve the debts and also submitted state correspondence pertaining to a child support case, two credit reports, and documents concerning his payment plan for the student loans. None of those documents show that Applicant made any recent payments toward the alleged debts.<sup>2</sup> Applicant has not established that the Judge committed any harmful error in his analysis of the evidence.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the 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 ¶ 2.3 and 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.”)

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<sup>2</sup> The credit reports reflected that the delinquent student loan in SOR ¶ 1.h. for about \$1,700 was closed, had a zero balance, and the remarks section stated, “Affected by natural disaster.” FORM response. While the Judge may have erred in failing to address this credit report entry in the decision, such an error was harmless because it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013). The debt in SOR ¶ 1.h. is not significant in comparison to Applicant’s other financial problems.

**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