

KEYWORD: Guideline F

DIGEST: Applicant contends that the Judge lacked impartiality. He states that the Judge’s purported narrow focus on his debts to the exclusion of favorable evidence demonstrates that the Judge had, in effect, an inflexible predisposition to deny clearances to those with financial problems. A review of the Decision as a whole provides no support for this argument. Adverse rulings alone do not demonstrate judicial bias. Applicant has not rebutted the presumption that the Judge went about his duties in an unbiased manner. Adverse decision affirmed.

CASENO: 17-00468.a1

DATE: 05/09/2018

DATE: May 9, 2018

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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 March 21, 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 January 2, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge was biased against him and 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 served in the military, deploying to a combat zone in support of U.S. operations. He received an honorable discharge upon the termination of his nine years of service. After leaving the military, Applicant received an undergraduate degree and later attended graduate school. Applicant and his wife have five children together.

In 2006, Applicant was discharged in Chapter 7 bankruptcy. His current problems began in 2011, when Applicant left a prior employment under adverse circumstances. While unemployed, Applicant returned to school to enhance his job prospects. During this time, he defaulted on a significant amount of debt, including student loans. These loans total about \$60,000 and the remainder about \$15,000.

One of Applicant’s creditors garnished his income, and this is the only SOR debt that has been resolved. Applicant told a clearance investigator that he had received collection notices regarding his debts and that he tried to resolve his student loan obligation. He stated that the creditor was not willing to establish a reasonable payment plan. Applicant enjoys a good reputation for the quality of his work performance as well as for his trustworthiness and reliability.

The Judge noted evidence that Applicant acquired delinquent debt after having been discharged in bankruptcy. He stated that, despite gainful employment, Applicant had resolved only one of the SOR debts and that through garnishment. He concluded that Applicant’s circumstances raised concerns about his security eligibility that had not been mitigated.

### **Discussion**

Applicant contends that the Judge lacked impartiality. He states that the Judge’s purported narrow focus on his debts to the exclusion of favorable evidence demonstrates that the Judge had, in effect, an inflexible predisposition to deny clearances to those with financial problems.

However, a review of the Decision as a whole provides no support for this argument. Applicant is obviously disappointed with the overall results of his case. However, adverse rulings alone do not demonstrate judicial bias. *See, e.g.*, ISCR Case No. 15-05047 at 3 (App. Bd. Nov. 8, 2017). *See also Bixler v. Foster*, 596 F.3d 751 at 762 (10<sup>th</sup> Cir. 2010). Applicant has not rebutted the presumption that the Judge went about his duties in an unbiased manner.

Applicant cites to record evidence that he contends the Judge either mis-weighed or did not consider, for example his character references, the underlying circumstances of his debts, and his background (to include his military service and educational attainments). He argues that his years in the military and his subsequent college career show that he can indeed follow rules and regulations, contrary to the Judge's ultimate conclusion.

However, the Judge made findings about Applicant's circumstances, including the things he had addressed in his brief. The concern under Guideline F is that unresolved delinquent debts may indicate that an applicant is lacking in judgment or self-control or that he or she may be unable to abide by rules and regulations. Directive, Encl. 2, App. A ¶ 18. *See* ISCR Case No. 15-01737 at 3 (App. Bd. Feb. 14, 2017). Given that Applicant acquired a substantial amount of delinquent debt after having previously been discharged in bankruptcy, and given that only one of the SOR debts has been resolved, the Judge did not err in concluding that Applicant's circumstances raised the concerns outlined in Guideline F of the Directive. Indeed, the Directive presumes a nexus between admitted or proved conduct 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).<sup>1</sup>

Moreover, the Judge did not err in his overall conclusion that Applicant had not mitigated these concerns. In a DOHA proceeding, it is the applicant who bears the responsibility to present evidence in mitigation of concerns raised in the SOR. Directive ¶ E3.1.15. Much of Applicant's evidence in response to the File of Relevant Material consists of general character references and various documents from the military, such as certificates of training, award citations, etc., which do not address the actual concerns arising from Applicant's financial problems.<sup>2</sup> That the Judge did not find this evidence sufficient to justify a favorable decision is sustainable. A disagreement with the Judge's weighing of the evidence or an ability to argue for an alternative interpretation of the record is not enough to show that the Judge weighed the evidence in a manner that was arbitrary capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-07062 at 2 (App. Bd. Nov. 21, 2017). We find no reason to conclude that the Judge mis-weighed the evidence or that he failed to consider all of the evidence in the record. *See, e.g.*, ISCR Case No. 17-00257 at 3 (App. Bd. Dec. 7, 2017).

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts

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<sup>1</sup>In addition to the evidence that Department Counsel submitted, we note that Applicant admitted all but one of the SOR allegations. These admissions alone are sufficient to raise security concerns.

<sup>2</sup>Applicant's response also includes a memorandum which, among other things, acknowledges his delinquent debts but does not include evidence of actual debt resolution.

found and the choice made.”” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge’s adverse 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