

KEYWORD: Guideline F

DIGEST: The language of the Directive is broader than a concern that an applicant might engage in illegal acts to pay his debts. Applicant bears the burden of persuasion as to mitigation. Adverse decision affirmed.

CASENO: 12-04554.a1

DATE: 07/25/2014

DATE: July 25, 2014

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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 November 19, 2013, 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 April 30, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert E. Coacher 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 erred in his findings about the disposition of Applicant’s debts; whether the Judge erred in concluding that his case raised security concerns; 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**

Applicant has worked for his current employer, a Defense contractor, since early 2009. He is working toward a bachelor’s degree. He served on active duty with the U.S. military from 1983 to 2004, when he retired.

Applicant has experienced financial difficulties resulting from his divorce in 2008. The court ordered him to pay alimony, child support, and a portion of his military retirement. He stated that this left him with only \$650 each month from his retirement pay. Applicant claimed that he gained custody of his children but continued to pay child support to the state in which the divorce occurred, resulting in an accumulated balance that he and his ex-wife divided between themselves. He claimed that he paid current accounts with this money, although he did not provide corroboration. The three SOR debts were for credit card accounts that Applicant used to pay expenses after his divorce.

Although it was not alleged in the SOR, Applicant’s financial history includes delinquent federal taxes from tax years 2008 through 2010. Applicant has established a payment plan of \$170 per month until the balance of \$11,000 is paid off. This is expected to occur in July 2016. Additionally, Applicant’s residence was the subject of a foreclosure action, due to his failure to make monthly payments. No deficiency resulted from the sale of the house.<sup>1</sup>

Applicant’s personal financial statement shows a net monthly remainder of \$151 after payment of expenses and debts, although this does not include his SOR debts. For two of these he has entered into a debt consolidation plan, toward which he has been making monthly payments of \$272 since October 2013. So far, none of the payments have been dispersed to the creditors. He also claims to have spoken with a representative of the creditor whose agency is not covered by the consolidation plan. He states that the representative refused to talk with him unless he gave the representative his bank account number, which he refused to do. This account is not resolved.

### **The Judge’s Analysis**

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<sup>1</sup>The Judge stated that he would consider the non-alleged conduct in the context of Applicant’s whole-person qualities. Conduct not alleged in a SOR may be considered for a number of things, including mitigation, rehabilitation, and/or a whole-person analysis. *See, e.g.*, ISCR Case No. 13-00310 at 3 (App. Bd. Aug. 15, 2013).

The Judge concluded that Applicant's financial circumstances raised security concerns. In further concluding that Applicant had not mitigated these concerns, he cited to a paucity of evidence regarding the likelihood of recurrence. He also stated that Applicant had not demonstrated responsible action in regard to this debts, having waited until August 2013 to enter into the debt consolidation plan. He stated that there is no clear evidence that Applicant's financial problems are being resolved.

In the whole-person analysis, the Judge addressed Applicant's military service and acknowledged that his divorce was a circumstance beyond his control. However, he stated that Applicant had not demonstrated a track record of debt repayment. He stated that the favorable evidence in the record was not sufficient to mitigate the concerns in Applicant's case.

### **Discussion**

Applicant challenges the Judge's findings about the disposition of his debts. He characterizes these findings as meaning that his "three delinquent debts have not been paid upon." Appeal Brief at 1. He states that he has been paying funds to the debt consolidation company regarding two of the debts and that his effort to resolve the third has not met with success. Applicant's appeal brief contains evidence from outside the record, including documents that, in fact, post-date the Judge's decision. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

The Judge found that Applicant was making payments to the debt consolidation company. However, he stated that none of those payments had been disbursed to creditors. Decision at 3. In the Analysis, he stated that there "is no evidence that payment towards any debts have been made under this plan." Decision at 5. These findings are consistent with the record that was before the Judge. The Judge's material findings of security concern are based upon substantial evidence. This is "such relevant evidence as a reasonable mine might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See also* ISCR Case No. 11-13948 at 3 (App. Bd. Feb. 26, 2014). Even if the Judge erred in finding that no disbursements had been made, there is no reason to believe that he would have decided the case differently, given the relative recency of Applicant's efforts to resolve his debts.

Applicant cites to the statement of concern in the Directive regarding Guideline F. He states that he will not engage in illegal activities in order to obtain money for debt repayment. The statement of concern includes the following:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, Enclosure 2 ¶ 18.

The language of the Directive is broader than a concern that an applicant might engage in illegal acts in order to pay his debts. Guideline F requires a Judge to consider the totality of an applicant's circumstances—the reasons underlying the financial problems and the applicant's efforts to address them—in order to arrive at a conclusion about his or her fitness to have access to classified information.

The Directive lists several conditions that might be disqualifying under Guideline F. In this case, the Judge found two that were raised by Applicant's financial problems: 19(a): inability or unwillingness to satisfy debts and 19(c): a history of not meeting financial obligations.<sup>2</sup> Given evidence of Applicant's delinquent debts, totaling nearly \$27,000, which were not paid off as of the end of the record, the Judge's conclusion that Applicant's case raised security concerns is sustainable. The Directive presumes a nexus between proven or admitted conduct under any of the Guidelines and an applicant's security eligibility. *See, e.g.*, ISCR Case No. 10-00925 at 3 (App. Bd. Jun. 26, 2012).

Applicant argues that he has done all that he can in order to address his debts. He also argues that the Judge's conclusion that he has not shown that his debts are unlikely to recur is unreasonable. In making these arguments, Applicant challenges the Judge's application of the mitigating conditions and whole-person factors. Applicant's arguments are largely a disagreement with the Judge's weighing of the record evidence. We note the Judge's finding that Applicant's debts resulted substantially from his divorce in 2008, yet it was not until mid-2013 that Applicant entered into the agreement with the debt consolidation company. This finding, along with evidence that the debts were ongoing as of the close of the record and that Applicant had delinquent federal tax debts as well, support the Judge's conclusion that Applicant had not demonstrated a track record of debt resolution or otherwise demonstrated responsible action. *See, e.g.*, ISCR Case No. 11-11455 at 3 (App. Bd. Feb. 4, 2014). In a DOHA adjudication the applicant bears the burden of persuasion as to mitigation. Directive ¶ E3.1.15. The Judge's conclusion that Applicant had failed to meet this burden did not contravene the weight of the evidence before him.

Applicant's brief refers to individuals whose cases have achieved notoriety insofar as they involve espionage or other possible criminal derelictions. He argues that his conduct does not rise to the level of that attributed to these named individuals. We cannot consider evidence from outside the record. Directive ¶ E3.1.29. In any event, an adverse decision under the Directive is not a determination that the applicant is disloyal. Directive, Enclosure 1, SECTION 7. Rather, such a decision signifies that the applicant has engaged in conduct or has otherwise experienced

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<sup>2</sup>Directive, Enclosure 2 ¶¶ 19(a) and (c).

circumstances that raise questions about his or her judgment and reliability.<sup>3</sup> Such questions, if not mitigated by the applicant, can impugn his or her fitness for access to national secrets.

The Judge examined the relevant data 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, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

### Order

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra’anan  
Michael Y. Ra’anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board

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<sup>3</sup>Applicant’s appeal brief is cast in rather strong language, arguing in effect that he has demonstrably done all that he could do to resolve his problems and that the Government’s position, and the Judge’s Decision, are without foundation. To the extent that he is arguing that the Judge may have been influenced by emotions or by considerations other than a common sense approach to the case, he may be arguing that the Judge had an inflexible predisposition to rule against him. After examining the Decision in light of the record as a whole, we conclude that Applicant has not rebutted the presumption that the Judge was impartial. *See, e.g.*, ISCR Case No. 08-02299 at (App. Bd. Nov. 12, 2010). Applicant also notes that his continued employment is contingent on his possession of a clearance. The effect that an adverse decision may have on an applicant is not a relevant or material consideration in evaluating his or her security eligibility. *See, e.g.*, ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012).

