

KEYWORD: Guideline F; Guideline J

DIGEST: In evaluating Applicant’s case for mitigation, the Judge stated that he had failed to demonstrate responsible action in regard to his debts. She also concluded that Applicant’s criminal record evidenced a pattern of unreliable conduct. The Judge’s conclusions are sustainable on this record. Adverse decision affirmed.

CASE NO: 12-07158.a1

DATE: 10/01/2013

DATE: October 1, 2013

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 April 1, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On July 23, 2013, 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**

The Judge found that Applicant is a 34-year-old high school graduate who has received an associate's degree in business. He was married from 2002 to 2004 and has one child from that marriage. He has two children from his current marriage and two others from previous relationships. He pays child support for the children who do not live in his household.

Applicant has numerous delinquent debts. These are for medical treatment, student loans, child support arrearages, etc. Two of his debts have been reduced to judgment. He has made some payments toward the student loans, but none of his other debts have been paid or resolved. He attributes his financial problems to periods of unemployment. He has had difficulty making child support payments. When he would get behind, the state would suspend his driver's license. Applicant stated that he had an agreement with the mothers of his children to pay them directly. He did not get a modification of his child support orders, however, so that when he failed to make payments as required it would trigger the suspension of his license.

Applicant has hired a credit consolidation attorney, who will contact creditors and develop a repayment plan. The attorney sent letters to the creditors about two weeks before the hearing. At the close of the record, Applicant was awaiting their responses.

Applicant also has a history of criminal activity. In addition to several charges of driving with a suspended license, he has also been charged with receiving stolen property, destruction/concealment, etc., of property subject to a security interest, and aggravated assault resulting from an altercation with his wife, which charge was dismissed. He was found guilty of the other two offenses mentioned above, as he was with the numerous driving offenses.

### **The Judge's Analysis**

The Judge concluded that Applicant's circumstances raised security concerns under both Guidelines alleged in the SOR. In evaluating Applicant's case for mitigation, the Judge stated that he had failed to demonstrate responsible action in regard to his debts and that he had failed to demonstrate good-faith efforts to pay them. The Judge extended some credit to Applicant for having hired the attorney, although she noted that there was no evidence that Applicant had ever received financial counseling. She concluded that Applicant's criminal record evidenced a pattern of unreliable conduct. She noted in particular that he was repeatedly having to pay fines for his driving offenses which could have been better spent in addressing his child support obligations or other

debts. She ultimately concluded that Applicant had failed to meet his burden of persuasion as to mitigation.

### **Discussion**

Applicant cites to record evidence that he believes to be favorable to him, such as his having hired a lawyer, the effect of his unemployment on his financial condition, his reasons for having expended funds on renovating his home, and the circumstances underlying his driver's license suspensions. The Judge discussed the evidence that Applicant has cited. Her ultimate decision was consistent with the record that was before her. Applicant has not rebutted the presumption that the Judge considered all of the evidence. Neither has he demonstrated that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g., ISCR Case No. 09-04696 at 4 (App. Bd. Jul. 3, 2013).*

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: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

James E. Moody  
James E. Moody  
Administrative Judge

Member, Appeal Board