

KEYWORD: Guideline F

DIGEST: The Government presented substantial evidence of Guideline F concerns in Applicant’s case. We cannot consider new evidence on appeal. Adverse decision affirmed.

CASE NO: 12-11652.a1

DATE: 09/12/2013

DATE: September 12, 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. 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). The SOR is undated. DoD sent the SOR to Applicant accompanied by a letter dated November 14, 2012. Applicant requested that the case be decided on the written record. On June 27, 2013, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey denied Applicant’s request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge’s decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable security clearance decision.

The Judge found: Applicant is 56 years old. His SOR lists five delinquent or charged-off debts, totaling \$34,664. He denied the SOR allegation at 1(a), which was an \$867 debt to a private company. Applicant claimed the debt was paid. The remaining debts were the federal tax liens, regarding which Applicant stated, “I admit because I cannot categorically deny.” Decision at 3. He indicated that he had been in communication with the IRS regarding the debts, and they had not given him any information, including the specifics of the debts. He indicated that while awaiting communication from the IRS, he had increased his contributions to the U.S. Treasury as a good faith effort to resolve the debts if they remain unpaid.

Applicant indicated he was unsure of the basis for the tax liens, but suggested that they related to an unpaid child support issue he believed had been resolved. In September 2012, Applicant indicated that he had contacted the IRS, and the IRS said it would be 30 to 45 days before he would hear from an IRS agent. There is no evidence of financial counseling. There is no documentary evidence of any payments to SOR creditors, correspondence to or from creditors, or debt disputes. There is no evidence of progress resolving his SOR debts. Applicant did not provide any response to the government’s File of Relevant Material.

The Judge concluded: The record establishes Applicant has five delinquent or charged-off debts, totaling \$34,664. The Government established the disqualifying conditions in AG ¶¶ 19(a)<sup>1</sup> and 19(c).<sup>2</sup> Applicant’s conduct in resolving his delinquent debt does not warrant full application of any mitigating conditions to all of his SOR debts. He did not provide any documentation proving that he paid the debt he asserts has been paid. There is no evidence of financial counseling, payments to SOR creditors, correspondence to or from creditors, or debt disputes. There is no evidence of progress resolving his SOR debts. He did not provide documentation proving that he maintained contact with his SOR creditors, and he did not provide any documentation showing his attempts to negotiate payment plans with his SOR creditors. There is insufficient evidence that his financial problem is being resolved and is under control. He did not establish his financial responsibility. More documented financial progress is necessary to fully mitigate security concerns.

Applicant argues that his financial difficulties do not raise unmitigated questions about his reliability, trustworthiness and ability to protect classified information. He asserts that his failure to establish financial responsibility is more of a misunderstanding than poor judgment, and that he is attempting to resolve the concerns. He states that he is capable of understanding and taking reasonable actions to resolve his financial issues. Applicant argues that the behavior happened so long ago and is so infrequent, that it is unlikely to recur.<sup>3</sup> Applicant’s assertions do not establish error on the part of the Judge.

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<sup>1</sup> “[I]nability or unwillingness to satisfy debts[.]”

<sup>2</sup> “[A] history of not meeting financial obligations[.]”

<sup>3</sup> Applicant’s statement appears to be making reference to Guideline F Mitigating Condition ¶ 20(a), “[T]he behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment[.]”

A review of the record and the Judge's decision indicates that the Judge's conclusion that Guideline F disqualifying conditions apply is supported by substantial evidence. Concerning mitigation, the Judge noted that Applicant had failed to provide any documentary evidence that one of the debts had been paid, that he had undergone financial counseling, that he had made any payments on his overdue debts, or that there had been any correspondence or contact or attempts to negotiate payment plans between Applicant and his creditors. Given the paucity of evidence provided by Applicant relating to efforts to address his debts, the Judge's conclusion that Guideline F mitigating conditions did not apply is sustainable.

Applicant states that he has filed a Freedom of Information Act request to obtain documentation regarding the IRS liens. He submitted documentation of debt resolution with his appeal brief. He also indicated that he has filed a dispute for the non-IRS debt alleged in the SOR. These are new matters not contained in the record, which the Board cannot consider. *See* Directive ¶ E3.1.29. ("No new evidence shall be received or considered by the Appeal Board").

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts 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 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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

**Order**

The decision of the Judge is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board