

KEYWORD: Guideline F

DIGEST: Given that Applicant’s delinquent debts have been in existence since at least 2006 and that most of them were unresolved as of the close of the record, a reasonable person could conclude that Applicant has exhibited a history of debt problems. Adverse decision affirmed.

CASE NO: 14-01771.a1

DATE: 09/21/2016

DATE: September 21, 2016

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 14-01771
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

William Ferris, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 20, 2014, 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 hearing. On June 29, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Michael H. Leonard 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 concluding that Applicant's case raised security concerns; whether the Judge failed to consider all of the evidence in the record; whether the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law; whether the Judge erred in his application of the mitigating conditions, 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 is employed in the Defense industry. Since early 2010, he has worked in support of U.S. objectives overseas. He previously served in the military, retiring as an E-9.

Applicant has a history of financial problems. He admitted to owing all of the nearly \$50,000 worth of delinquent debt alleged in the SOR. In addition, documentary evidence substantiates the debts. Applicant had a period of unemployment and underemployment from 2005 to 2010. In 2005, he retired from a Government job but realized that he needed more income. He accepted a job as a salesman, but he did not earn any commissions, so he quit. During this time he incurred indebtedness for business-related expenses, as well as for personal expenses.

He also worked for about five months as a Defense contractor overseas and then as a substitute teacher. Throughout this period he performed duties in the Reserves. After quitting his sales position, Applicant consulted with an attorney who advised him to file for bankruptcy. The attorney also advised him to stop paying bills in advance of a bankruptcy filing. However, Applicant's contractor job gave him enough income so that he could no longer qualify for bankruptcy.

After returning stateside, Applicant discussed his options with his attorney. They waited for creditors to file collection lawsuits and then attempted to settle. Applicant has also used his current attorney in an effort to resolve debts. In all, Applicant resolved five of the thirteen debts alleged in the SOR. However, Applicant presented no evidence that he had resolved the remaining debts.

Since 2010, Applicant has consistently earned over \$100,000 annually. He has about \$7,000 in a savings account and about \$15,000 in an investment account. He stated that he has spent money on various family members over the years.

The Judge's Analysis

Noting that Guideline F includes within its scope the possible connection between an applicant's financial problems and his or her ability to protect classified information, the Judge concluded that Applicant's circumstances raised two disqualifying conditions: 19(a) and (c).¹ In addressing Applicant's case for mitigation, the Judge noted evidence of Applicant's unemployment and business-related expenses, which were circumstances not within his control. However, he also

¹Directive, Enclosure 2 ¶19(a): "inability or unwillingness to satisfy debts;" and Directive, Enclosure 2 ¶19(c): "a history of not meeting financial obligations[.]"

noted that these difficulties occurred several years ago and that Applicant has been fully employed for a number of years as well. The Judge stated that Applicant, despite his income, has done little to show that his financial difficulties are under control. He concluded that Applicant's problems continue to cast doubt upon his ability to protect classified information.

Discussion

Applicant argues that the Judge erred in concluding that his case raised concerns under Guideline F. He states that his period of unemployment was not lengthy and did not qualify as a history of failing to pay his debts. He also denied that he had demonstrated an inability to pay his debts.

The Directive presumes there is a nexus or rational connection between admitted or proven circumstances under any of its guidelines and an applicant's security eligibility. *See, e.g.*, ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016). In this case, Applicant admitted most of the SOR allegations, and the Judge found that the evidence presented by the Government was sufficient to constitute substantial evidence of the allegations as well.² Given that Applicant's delinquent debts have been in existence since at least 2006 and that most of them were unresolved as of the close of the record, a reasonable person could conclude that Applicant has exhibited a history of debt problems. *See, e.g.*, ISCR Case No. 12-03984 at 3 (App. Bd. Jun. 10, 2014) for the proposition that unresolved debts are a continuing course of conduct for purposes of Guideline F analysis. Applicant's brief has not provided a reason to rebut the presumption of nexus.

Applicant does not specifically challenge the Judge's findings of fact but provides a narrative description supplementing those findings. Applicant cites to his reliance upon the advice of the bankruptcy attorney, his military service, and the circumstances underlying his financial delinquencies. He argues, among other things, that the Judge did not extend sufficient weight to evidence concerning the bankruptcy attorney's advice. The Judge made findings about these things, discussing much of it in the analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Neither has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-05795 at 2, 3 (App. Bd. Apr. 26, 2016).

Applicant challenges the Judge's treatment of the mitigating conditions and the whole-person factors. Among other things, he cites to evidence that some of Applicant's debts that had been cancelled, resulting in additional tax liability. He argues that, under the circumstances, it was an error for the Judge to have expected Applicant to pay debts that have been cancelled. However, a DOHA proceeding is not an exercise in debt collection. *See, e.g.*, ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Even if an applicant's debts have been paid, or the creditor is no longer seeking payment, the Judge can still consider the underlying circumstances in order to evaluate the applicant's trustworthiness and reliability. *See, e.g.*, ISCR Case No. 14-02394 at 3-4 (App. Bd. Aug. 17, 2015). Given the totality of the evidence, we find no reason to disturb the Judge's treatment of

²Substantial evidence is "such relevant evidence as a reasonable mind 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. 13-01281 at 3 (App. Bd. Aug. 4, 2014).

the mitigating conditions or his whole-person analysis. In making his arguments, Applicant cites to matters not contained within the record, including assertions about events that occurred after the Decision was issued. We cannot consider new evidence on appeal. Decision ¶ E3.1.29.³

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.’” *Egan, supra*, at 528. *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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board

³Applicant challenges the Judge’s interpretation of *Department of the Navy v. Egan*, 484 U.S. 518 (1988) and *Duane v. Department of Defense*, 275 F.3d 988 (10th Cir. 2002). He appears to understand the Judge to have cited these cases in support of the proposition that the Appeal Board’s scope of review is limited in the same manner as that of the Merit System Protection Board, which has no authority to address the substance of clearance adjudications. In fact, the Judge cited these cases in the Law and Policies section of the decision for the well-settled principle that no one has a due process right to a security clearance. Decision at 5. The Judge neither stated nor intimated anything about the authority of the Appeal Board, whose responsibilities are set forth in Directive ¶ E3.1.32.