

KEYWORD: Guideline F

DIGEST: Applicant, a financial advisor, has delinquent debt in excess of \$50,000. The record demonstrates that the Judge considered Applicant's submissions and reasonably concluded that she had failed to meet her burden of persuasion. Adverse decision affirmed.

CASENO: 08-07584.a1

DATE: 10/02/2009

DATE: October 2, 2009

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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 Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On January 15, 2009, DOHA 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 July 8, 2009, after the hearing, Administrative Judge John Grattan Metz, Jr., 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's decision fails to consider her evidence in mitigation and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.<sup>1</sup>

The Judge made the following pertinent findings of fact: Applicant is a financial advisor employed by a defense contractor. She previously held a security clearance in 1998 and 1999.

Applicant has delinquent debts totaling over \$50,000. Applicant claimed to have paid off several of these debts, though she provided no corroboration. She was offered settlement agreements with three creditors, although there is no record evidence that she accepted the offers or paid the debts. She was on maternity leave from April to June of 2001, during which time she experienced a decline of income. She testified that she receives no child support from her child's father. "Many of the debts she disputes are medical accounts for which she had insurance. However, she did not corroborate her claims that she paid the necessary co-pays and deductibles associated with those expenses. She denies other debts because she does not recognize the creditors, but has not taken into account potential successors-in-interest to the original creditors." Decision at 2.

In deciding the case adversely to Applicant, the Judge stated that her maternity leave of three months was not enough to have caused the financial problems alleged in the SOR and substantiated by the Government. As a consequence, her debts did not result from causes outside her control.<sup>2</sup> Furthermore, the Judge concluded that Applicant's response to her debts has not demonstrated financial responsibility—she has not received credit counseling<sup>3</sup> and her payments have generally not been made in a timely manner.<sup>4</sup> "Whatever efforts she has made to address her poor finances have been sporadic, ineffectual, and largely undocumented. The record does not indicate when, if ever, her financial situation will be settled enough for her to make clear progress on her delinquent debts." *Id.* at 4.

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<sup>1</sup>Applicant also requests that the decision in her case be delayed six months, presumably leaving the record open so that her situation can be reevaluated. The Board does not have the authority to process such a request. *See* Directive ¶ E3.1.29.

<sup>2</sup>*See* Directive ¶ E2.20(b): "the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances[.]"

<sup>3</sup>*See* Directive ¶ E2.20(c): "the person has received or is receiving counseling . . . and/or there are clear indications that the problem is being resolved or is under control[.]"

<sup>4</sup>*See* Directive ¶ E2.20(d): "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]"

The record demonstrates that the Judge considered matters which Applicant submitted in her own behalf. However, he reasonably concluded that she had failed to meet her burden of persuasion as to mitigation, in light of the age and extent of her debts and the paucity of record evidence as to corrective action regarding them. 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 Judge’s decision that “it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant” is sustainable on this record. Decision at 5. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’”).

### **Order**

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra’anan

Michael Y. Ra’anan  
Administrative Judge  
Chairman, 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