

KEYWORD: Guideline F

DIGEST: Judge concluded that Applicant's financial problems began when she was a mature adult, and she failed to address her delinquent debts for a significant period, giving rise to concerns about her judgment and reliability. Judge's conclusion that Applicant had not mitigated the case against her in light of her promise to pay off her delinquent debts as soon as she cleared up all the discrepancies in her credit report was sustainable. Promises to pay off debts in the future is not a substitute for a track record of paying debts and otherwise acting in a financially responsible way. Adverse decision affirmed.

CASENO: 08-10012.a1

DATE: 05/07/2010

DATE: May 7, 2010

In Re:	)	
	)	
-----	)	ISCR Case No. 08-10012
	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Candace L. Garcia, Esq., Department Counsel

**FOR APPLICANT**

Willie Ann Towne Willcox, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 11, 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 January 28, 2010, after the hearing, Administrative Judge Joan Caton Anthony 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 the Government had met its burden of production; whether certain of the Judge’s factual findings were in error; whether the Judge’s credibility determinations were in error; and whether the Judge’s adverse security clearance decision was arbitrary, capricious, or contrary to law. Finding no harmful error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is divorced and the parent of a 12-year-old child. A high school graduate, she is employed as a secretary by a government contractor. She has held a security clearance since 2001.

Applicant’s financial difficulties are the basis for the security concerns in this case. She has numerous delinquent debts, for such things as consumer goods, medical expenses, an automobile purchase, and unpaid taxes. Applicant was discharged in Chapter 7 bankruptcy in 2002. In 2003 and again in 2004 Applicant petitioned for Chapter 13 bankruptcy, but both times her petition was dismissed for failure to make payments.

Applicant married in 1995, divorcing in 2006. She incurred significant legal costs as a result of the legal proceedings attending the divorce. Applicant and her ex-husband share custody of their child and are both responsible for the child’s tuition in a private school. However, the ex-husband was injured on the job in January 2009 and has been unable to work since. Consequently, Applicant has assumed responsibility for the full amount of tuition payments.

Applicant lives with her child and her mother in an apartment. Applicant and her mother share expenses. Applicant has consulted a bankruptcy attorney and two counseling firms about her debts. However, at the close of the record, she had not made a decision as to how to resolve her indebtedness.

The Judge stated, “Applicant has experienced financial difficulties since at least 2001, and she has sought bankruptcy protection three times. Most of the debts alleged in the SOR remain unpaid and unresolved. Applicant’s financial problems began when she was a mature adult, and she failed to address her delinquent debts for a significant period, a decision that raises concerns about her judgment and reliability.” Decision at 8. Accordingly, the Judge concluded that Applicant had failed to mitigate the security concerns arising in her case.

Applicant contends that the Judge erred in concluding that her financial condition raised

Financial Considerations Disqualifying Conditions (FCDC) 19(a)<sup>1</sup> and 19(c).<sup>2</sup> We have considered Applicant's argument in light of her admissions to the SOR and the record evidence as a whole. The extent of Applicant's delinquent debts, some of which go back to the early 2000s, and evidence that she twice filed for bankruptcy protection after recently having had her debts discharged under Chapter 7 of the bankruptcy code, raise reasonable questions about Applicant's ability or willingness to satisfy her debts and certainly constitute a history of her not meeting financial obligations. Accordingly, the Judge properly evaluated the case in the context of Applicant's burden of persuasion as to mitigation. *See* Directive ¶ E3.1.15 (After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns.)

Applicant challenges some of the Judge's findings of fact. For example, she contends that one of the debts, \$345 owed for cell phone services, was previously discharged in bankruptcy, rather than remaining unpaid, as alleged in the SOR and found by the Judge. However, Applicant admitted this SOR allegation, relieving Department Counsel of any further requirement of proof. Moreover, the document which Applicant cites in support of her contention that the debt was discharged does not reference this debt, and Applicant did not show that the debt was scheduled and discharged in 2002. Rather, the document, Government Exhibit (GE) 9, appears to be the result of a Lexis search that lists the dates pertinent to the Chapter 7 bankruptcy but does not actually mention specific debts. Furthermore, even if the debt had been scheduled, its discharge would not have precluded it from being disqualifying under FCDC 19(a) and 19(c), and a discharge, by itself, is not necessarily mitigating under FCMC 20(d). *See, e.g.*, ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001). There is no error in the Judge's finding.

Applicant also challenges the Judge's finding that her two Chapter 13 bankruptcy filings were dismissed due to non-payment. Applicant admits that the 2003 bankruptcy was dismissed because she failed to make payments. Tr. at 58-59. But, she contends that the 2004 case was dismissed on her own motion, to facilitate the sale of a house. Applicant Brief at 17. GE 6, U.S. Bankruptcy Court Docket Report at 2-3, demonstrates that both the Trustee in Bankruptcy and Applicant filed motions to dismiss the 2004 Chapter 13 petition. The Trustee filed the motion due to alleged non-payment; no reason is given for Applicant's motion. GE 6 further demonstrates that the Bankruptcy Judge granted *Applicant's* motion. Therefore, the Judge's finding regarding the 2004 filing is not supported by the record. However, examining this error in light of the record as a whole, we conclude that, even if it had not occurred, it is unlikely that the Judge would have decided the case differently. Therefore, the error is harmless. *See, e.g.*, ISCR Case No. 08-07528 at 2 (App. Bd. Dec. 29, 2009); ISCR Case No. 01-23362 at 2 (App. Bd. Jun. 5, 2006). Other than this, the Judge's material findings of security concern are based upon substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial 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.")

Applicant states that she challenges the Judge's credibility determinations. The Directive requires us to give deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1. In this

---

<sup>1</sup>Directive ¶ E2.19(a): "inability or unwillingness to satisfy debts[.]"

<sup>2</sup>Directive ¶ E2.19(c): "a history of not meeting financial obligations[.]"

case, Applicant's challenge appears to be merely disagreement with the Judge's weighing of the record evidence. Accordingly, we find no basis to conclude that the Judge's credibility determinations were in error.

Applicant claims that the Judge erred in her application of the pertinent mitigating conditions, contending, *inter alia*, that Applicant had promised to pay off her delinquent debts once she "clears all of the discrepancies found in her credit report." See, e.g., Applicant Brief at 11. However, promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible way. See, e. g., ADP Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008); ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999). We have considered the Judge's treatment of the pertinent mitigating conditions and find no error in 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 adverse 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). "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive ¶ E2.2(b).

### Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael D. Hipple

Michael D. Hipple  
Administrative Judge  
Member, 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