

KEYWORD: Guideline F

DIGEST: The Judge's favorable application of Mitigating Conditions 20 (b) and 20(d) were not supported by the record evidence given the number of Applicant's delinquent debts, the cumulative size of her indebtedness, and her failure to use available funds to pay down her delinquent debts. The Judge's application of Mitigating Condition 20(e) is not sustainable because there is no documentation to support its application to the pertinent medical debts, and Applicant was unable to explain reasonably why she had not taken the normal course of claims submissions for those debts. 20(e) does not apply to the one cited non-medical debt because the document submitted was not sufficient to demonstrate that the debt was not legitimately her responsibility. Favorable decision reversed.

CASENO: 08-12184.a1

DATE: 01/07/2010

DATE: January 7, 2010

In Re:)	
-----)	
Applicant for Security Clearance)	ISCR Case No. 08-12184

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 14, 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 September 16, 2009, after the hearing, Administrative Judge Mary E. Henry granted Applicant’s request for a security clearance. Department Counsel appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raises the following issues on appeal: (a) whether the Judge made erroneous material factual findings; (b) whether the Judge erred in applying certain Financial Considerations Mitigating Conditions; and (c) whether the Judge’s whole-person analysis is unsustainable because it fails to address critical aspects of the case. For the following reasons, the Board reverses the Judge’s favorable security clearance determination.

Whether the Record Supports the Judge’s Factual Findings

A. The Judge made the following pertinent findings of fact:

Applicant is 39 years old and recently worked as a truck driver for a DoD contractor before her interim DoD security clearance was withdrawn. She is currently not working. In 1991, Applicant’s house burned. As a result, she received assistance for low-income housing under Section 8 (See United States Housing Act) and rented property from 1991 until 1998. At the time she vacated the property she believed all her rents had been paid and all required repairs were completed and paid. Applicant’s former husband owes her \$17,000 in unpaid child support.

Applicant married her current husband in 1995. While they had no children together, Applicant’s husband has helped raise Applicant’s three children from prior marriages. Applicant decided to stop working in 1998 and to stay at home owing to medical problems with her children. She did work at selling items at flea markets between 1998 and 2002. Her husband worked two jobs as a trucker for a time, and then accepted a full time job in 1998. In 2000, Applicant’s husband injured his back on the job, and as a result he was laid up for three months. During this time, he did not receive any salary or worker’s compensation payments because of a dispute regarding who was liable for the payments. With no income for three months, Applicant and her husband did not pay their bills. Applicant’s husband returned to work against his doctor’s advice after three months. The couple filed a Chapter 13 bankruptcy in February 2001. They made approximately \$12,000 in

payments during the bankruptcy. In 2002, Applicant's husband purchased a two-bedroom trailer for \$2,300, which became the family's home. In September 2002, Applicant's husband collapsed because of problems related to his earlier back injury and he could no longer work.

Applicant's husband did not receive worker's compensation for a significant period of time following the recurrence of his injury. As a result, Applicant and her husband could not make any additional payments under their bankruptcy plan and got behind on their bills. The bankruptcy court dismissed their case in March 2003. After the dismissal of the bankruptcy petition, Applicant's husband began receiving 80% of his salary as his worker's compensation benefit. Applicant and her husband received a \$15,000 settlement from a car insurance carrier in 2003. They used the settlement money to fund a four-month truck driving school for Applicant and used the \$6,000 remainder to pay some of their accumulated bills. Applicant began a career as a truck driver in December 2003.

In 2004, Applicant's husband received \$21,000 in settlement of his initial worker's compensation claim. He purchased a larger trailer for the family home in the amount of \$18,000 and used the balance to pay some medical bills. In May 2005, Applicant's employer provided her with a truck that contained mold. A prior asthmatic condition triggered a severe allergic reaction to the mold. She missed work for four months, during which time Applicant's husband's back injury continued to prevent him from working. Applicant incurred medical bills for her condition, which she submitted for worker's compensation payment. Her worker's compensation case remains unresolved, as do the underlying medical bills.

In August 2006, Applicant's husband settled his second worker's compensation case for \$310,000. He and Applicant purchased a house and land in a rural area for \$ 155,000 cash, a car for \$22,000, a \$16,000 pool to help with the husband's back injury and a special bed for \$6,000. They purchased house furnishings, paid \$7,800 for Applicant's mother's funeral and placed \$50,000 in a retirement annuity. After these purchases, \$43,000 remained. Applicant did not explain why the money was not used to pay the medical bills not covered by worker's compensation and incurred through December 2006. However, the tax return discussion *infra* may explain her financial decisions.

After moving into their new house in 2006, Applicant and her husband rented their trailer under a rent-to-own contract. The prospective purchasers violated the contract by not paying property taxes on the trailer and moved out. Applicant recently learned that she is responsible for unpaid taxes for the years 2007 and 2008 in the amount of \$2,128. She paid \$720 in August 2009 and has agreed to pay \$194 a month for the next 11 months.

In December 2006, Applicant's teenage sons were badly injured in a car accident. She incurred medical bills for their treatment. A civil lawsuit is currently pending and the parties are discussing a possible settlement.

Applicant's husband was released to return to work in January 2008. Applicant decided to join him to form a husband and wife truck driving team. The job proved too stressful and they decided to end it. They then decided to purchase their own truck. The vehicle cost \$130,000. They paid \$57,000 down and anticipate repaying the balance in two and one-half years. The monthly income from owning and operating the truck is projected to be \$997 per month. The \$194 monthly tax debt is not included in this calculation. The retirement annuity has been cashed to pay bills, as Applicant and her husband cannot work until the clearance issue is resolved.

Applicant's 2007 and 2008 income tax returns, filed jointly with her husband, reflect that they paid medical bills in the amounts of \$16,560 and \$13,567 respectively during those years.

The SOR alleges \$26,061 in unpaid debts, \$13,000 of which is from a power company. Applicant denies owing this debt. At the hearing, Applicant provided a letter from the power company, which indicated she did not owe any money to it. Subsequent to the hearing, Applicant and her counsel contacted the collection agency listed as the holder of the debt. The collection agency has not provided specific information on the debt. Applicant has challenged the debt, in an effort to determine, what, if any, amount she owes. The majority of the remaining debts, \$12,350 worth, concern medical bills for Applicant and her family and are held by one collection agency. \$8,998 of the debts are bills attributed to Applicant, \$176 to her husband, and \$1,663 to her sons. The son's bills are for medical services provided between August 2004 and January 2006 and are not related to their accident injuries. \$3,296 of Applicant's bills, incurred between May 2005 and December 2005 are connected to her work-related asthma problems.

In the past, Applicant paid some money to the collection agency holding the majority of the medical debts listed in the SOR. In March 2009, she started a payment plan with this agency. She agreed to pay \$25 a month and make the payment through September 2009. After that the creditor will charge her bank account each month for the monthly payment. She could not pay the creditor's recent one-time settlement offer.

A friend of the Applicant, who works as an auctioneer, recommended Applicant for a clearance as she is trustworthy. Applicant's employer and co-workers describe her as reliable, efficient, hard working, honest, and dependable.

B. Discussion

The Appeal Board's review of the Judge's findings of fact is limited to determining if they are supported by substantial evidence—"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. "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620-21 (1966). In evaluating the Judge's findings, we give deference to the Judge's credibility determinations. Directive ¶ E3.1.32.1.

Department Counsel asserts four specific errors concerning the Judge's findings of fact. These involve record evidence which the Judge either omitted from her findings or from which she made unsupported findings.

Department Counsel first argues that the Judge erroneously found that Applicant had used the remainder from the \$310,000 settlement to pay other medical bills not alleged in the SOR, and therefore Applicant did not have a pool of money with which to pay her remaining debts. Department Counsel bases this assertion on the Judge's mentioning of the 2007 and 2008 tax returns in the next sentence, the mentioning creating an inference that the settlement remainder was used to pay off medical debts that later showed up as deductions on the tax returns.

Department Counsel is correct in arguing that, given the lack of evidence on this point, the Judge's inference was speculative and improper— if, in fact, making such an inference is what she did. The Judge's language is cryptic and it is difficult for the Board to determine what she meant by the statement, "Applicant did not explain why this money was not used to pay those medical bills not covered by worker's compensation and incurred through December 2006. However, the tax return discussion *infra* may explain her financial decisions."¹ That discussion, occurring later in the Judge's findings of fact, merely mentions the dollar amounts of medical bill deductions on the tax returns and establishes no link between those deductions and any settlement remainder money. The record evidence does not establish such a link. Thus, to the extent the Judge made a finding, by inference, that the \$310,000 settlement remainder money was used to pay medical bills listed on the tax returns, such a finding was erroneous.² The record strongly indicates the contrary. When cross-examined by Department Counsel at the hearing, Applicant was asked at some length to indicate how the \$310,000 settlement had been spent. Although given ample opportunity to do so, Applicant did not respond at any time that a portion of the settlement money had been used to retire *any* debts, let alone the medical debt tabulated on the tax returns.³ Indeed, the Judge's explicit finding that Applicant did not explain why this money was not used to pay medical bills not covered by worker's compensation seriously undercuts any suggestion or inference that the settlement remainder was used for that purpose.

Secondly, Department Counsel argues that the Judge committed error by failing to make any factual findings concerning Applicant's hesitation about paying her delinquent medical bills unless the creditors reduced the amounts owed. Department Counsel states that the Judge's failure to address this aspect of the case directly affected her Guideline F analysis, in particular her conclusion that Applicant made a good-faith effort to responsibly address her indebtedness. Department Counsel's argument has merit.

¹Decision at 5.

²The Judge erroneously found that the remainder was \$43,000. On appeal, both parties cite the figure of \$53,000, and that figure is supported by the record evidence.

³Tr. 138-142.

A Judge is not required to discuss each and every piece of record evidence in making a decision, but the Judge cannot ignore, disregard, or fail to discuss significant record evidence that a reasonable person could expect to be taken into account in reaching a fair and reasoned decision. ISCR Case No. 05-03250 (App. Bd. Apr. 6, 2007); ISCR Case No. 02-19479 at 6 (App. Bd. Jun. 22, 2004). Department Counsel correctly argues that Applicant's attempts to settle outstanding debts at a reduced amount speaks directly to an evaluation of the good faith nature of Applicant's effort to reduce indebtedness responsibly, given the record evidence of the fact that she had funds available to fully satisfy these debts, and the fact that Applicant's attempts to settle the debts for a lesser amount resulted in their going unpaid. Thus, Applicant's attempts to settle the debts in the manner she did was an important aspect of the case affecting an evaluation of mitigation that warranted recognition and analysis on the part of the Judge.⁴

Thirdly, Department Counsel claims error on the part of the Judge because of her finding that six debts alleged in the SOR⁵ resulted from Applicant's own work-related illness (asthma) and, therefore, should have been paid for by a third party, either worker's compensation or her insurance provider. This contention has mixed merit. In her findings of fact the Judge clearly states that she considered the six bills, in an aggregate amount of \$3,296, to be connected to her work-related asthma problems. Contrary to Department Counsel's assertions, the dates of services for these medical debts are not inconsistent with the time frame of injury claimed by Applicant. She went to work for a trucking company in April 2004 and drove for them until May 2005, at which time she was required to drive in a truck cab containing mold. She became seriously ill, ceased working for the company, and was hospitalized for her condition. The record establishes that she continued to experience problems for approximately three months and was seeing a doctor for her condition. As Department Counsel points out, the dates of the medical services provided on these bills include May 2005, September 2005, and December 2005. This sequence is proximately related to the work-related health issues described by Applicant, and therefore the Judge could reasonably conclude that the bills in question were from work-related injuries.

Department Counsel's assignment of error on this point continues with the assertion that the Judge found that, because the injuries were work related, the medical bills should have been paid by either worker's compensation or insurance and Applicant's denial of the debts is legitimate. Department Counsel states that the Judge's finding is not supported by such relevant evidence as a

⁴Department Counsel notes that there is ample precedent for the proposition that it is error for a Judge to fail to consider contrary record evidence or an important aspect of the case. In addition to many cases where the issue is mentioned in a paragraph setting forth the framework for the Board's analysis, the Board has previously addressed this error in several cases that ought to be familiar to the Judge. *See, e.g.*, ISCR Case No. 07-16511 at 5-6 (App. Bd. Dec. 4, 2009); ISCR Case No. 08-06058 at 6 (App. Bd. Sep. 21, 2009); ISCR Case No. 08-05869 at 5 (App. Bd. Jul. 24, 2009); ISCR Case No. 07-15281 at 4 and 6 (App. Bd. Jun. 16, 2009); ISCR Case No. 07-13890 at 3 (App. Bd. Jan. 27, 2009); ISCR Case No. 07-16841 at 4 (App. Bd. Dec. 19, 2008); ISCR Case No., 07-11814 at 3 (App. Bd. Aug. 29, 2008); and ISCR Case No. 07-00558 at 6-7 (App. Bd. Apr. 7, 2008). As the Board noted in ISCR Case No. 08-01122 at n. 3 (App. Bd. Feb. 9, 2009), "No benefit accrues from persistent disregard of agency policy and a superior tribunal."

⁵The debts alleged at subparagraphs 1.n.,1.s.,1.t.,1.aa.,1.bb., and 1.rr. of the SOR.

reasonable mind might accept as adequate. On this record, Department Counsel's assertion has merit.

There is testimony from the Applicant to the effect that she submitted medical bills related to her 2005 work-related medical issues to either worker's compensation or her employer's health insurer. However, Applicant provided no documentation to show that she was covered by her employer's health insurance at the time of her health issues, or that she had filed the appropriate claims with either her employer's health insurance or worker's compensation. She testified that she never filed specific claims with the employer's insurance company, but had tried to contact them telephonically. Applicant also testified that she sent a letter to the insurance company, but that she was unable to produce it as she had not retained a copy.⁶ When asked by her attorney at the hearing if it were determined by the employer's insurance company that she, rather than they, were responsible for the outstanding medical bills, Applicant indicated that she would be willing to accept that responsibility.⁷

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under ¶ E3.1.14 for pertinent allegations. *See, e.g.*, ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006). At that point, the burden shifts to Applicant to establish either that she is not responsible for the debt or that matters in mitigation apply. Given the state of the record evidence concerning the bills related to Applicant's 2005 work-related illness, there is insufficient evidence to support the Judge's finding that Applicant's denial of these debts is legitimate and that the debts should be paid by the insurance company. As the evidence cited in the previous paragraph indicates, Applicant's own testimony indicates that she remains open to the possibility that the debts may ultimately be her responsibility. Thus, as Department Counsel argues, the fact that the Judge's finding on this point is unsustainable significantly undercuts her application of Guideline F Mitigating Condition 20(e)⁸

Lastly, Department Counsel argues that the Judge committed factual errors with respect to a \$13,000 debt from a power company.⁹ The Judge found that, at the hearing, Applicant provided a letter from the power company which indicated she did not owe any money to it.¹⁰ Department Counsel states that, in fact, the letter from the power company addressing the debt was inconclusive in that an attorney for the power company only told Applicant that he could not determine the nature of the product or service underlying the debt. Department Counsel also asserts that the letter was

⁶Tr. at 145-147.

⁷Tr. at 87-88.

⁸“[T]he individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.”

⁹SOR allegation 1.hh.

¹⁰Applicant's Exhibit C.

not a definitive determination that Applicant did not have an ongoing financial obligation, because the Applicant's credit report reflects that the debt has been assigned to a collection agency, and there is no evidence that Applicant is not indebted to this collection agency as a successor to the power company. Finally, Department Counsel notes that Applicant admitted in a post-hearing affidavit that the collection agency still held her liable for the debt and that if it is determined that she still owes on the debt, she will develop a repayment plan.¹¹

Department Counsel's characterization of the letter from the power company is correct. The letter states that after a search of the records related to Applicant and a specific address, the company was unable to identify the source of the debt. This stands in contrast to the Judge's finding that the power company confirmed that Applicant does not owe it any money. There is also the matter of the assignment of the debt to another entity. The Judge's finding is not supported by the record evidence, and to the extent that the Judge's application of Mitigating Condition 20(e) relies on it, that application is also in error.¹²

Whether the Record Supports the Judge's Ultimate Conclusions

A. Conclusions

The Judge reached the following conclusions:

The record evidence is sufficient to raise Guideline F Disqualifying Conditions 19(a)¹³ and 19(c).¹⁴ Mitigating Condition 20(a)¹⁵ does not apply. Applicant's financial problems began when her husband injured his back at work in 2000, did not work for three months, and did not receive worker's compensation benefits. Her husband reinjured his back in 2002, causing him to stop working for more than five years. For sometime after this injury, he did not receive any worker's compensation benefits. In 2005, Applicant missed four months of work because of a job-related injury. These injuries and the resulting loss of income were beyond her control. Most of the accumulated debts from this period of time are paid, except some of the medical bills. Applicant acted reasonably under the circumstances by paying the bills as she could and obtaining a new job

¹¹Applicant's Exhibit M.

¹²In her discussion of the applicability of Mitigating Condition 20(e), the Judge seems to base her conclusion that Applicant rightfully challenged the validity of the power company debt on her finding that the power company stated Applicant did not owe it any money.

¹³ "[I]nability or unwillingness to satisfy debts."

¹⁴ "[A] history of not meeting financial obligations."

¹⁵ "[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."

skill to help earn income. Thus, Mitigating Condition 20(b)¹⁶ applies. Mitigating Condition 20(c)¹⁷ does not apply.

Applicant paid several smaller bills listed in the SOR. She has developed a payment plan and has worked diligently, and continues to work, to resolve all unpaid bills. She has made major progress in her debt resolution and her finances are sound. Mitigating Condition 20(d)¹⁸ partially applies. Mitigating Condition 20(e) applies to the power company debt and the more than \$3,000 of the medical debt listed in connection with Applicant's worker's compensation case.

The evidence in support of granting a security clearance to Applicant under the whole person concept is more substantial than the evidence in support of denial. Applicant's husband received a large settlement for his second work-related back injury. They used this money wisely and not foolishly. Over the last few years, Applicant and her husband strived to attain family stability and financial security after years of poverty-level living and financial instability. Between 2006 and 2008, they paid \$30,000 in medical bills. They made financial choices that they believed best served their family. Applicant and her husband think about how to spend their money and do so wisely. She is resolving the outstanding medical bills slowly. While some debts remain unpaid, they are insufficient to raise security concerns.

B. Discussion

A Judge is required to "examine the relevant data and articulate 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)).

"[N]o one has a right to a security clearance. . . The general standard is that a clearance may be granted only when 'clearly consistent with the interests of national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Appeal Board may reverse a Judge's decision to grant, deny, or revoke a security clearance if it is arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3.

Department Counsel contends that the Judge erred by applying Mitigating Condition 20(b) to the benefit of Applicant. Department Counsel maintains that even if Applicant's indebtedness was the result of a situation that was beyond her control, applicability of Mitigating Condition 20(b)

¹⁶"[T]he conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted reasonably under the circumstances."

¹⁷"[T]he person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control."

¹⁸"[T]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

is predicated upon Applicant having acted reasonably under the circumstances. Department Counsel argues that the Judge's conclusion that Applicant acted reasonably runs counter to the record evidence. This argument has merit.

Department Counsel points to the Judge's conclusion that despite having received over \$345,000 in insurance and settlement payments, Applicant acted reasonably, even though many longstanding medical bills remain unpaid. Department Counsel correctly states that the Judge failed to consider the fact that Applicant did not repay her delinquent debts when she had the financial means to do so, and the efforts that she did take to address many of her debts did not take place until or shortly before her receipt of the SOR. Department Counsel also asserts that the Judge's conclusion that Applicant acted reasonably is based upon an erroneous determination that Applicant had addressed the majority of her outstanding debts, "except some of the medical bills." The record evidence shows that 42 out of 47 debts alleged in the SOR are medical bills and only one has been paid. Also, of the five remaining non-medical debts, there is only substantial evidence of two having been paid. Department Counsel also correctly points out that a significant portion of the settlement money is not accounted for, and the Judge, when making her findings, had no solid explanation for why a \$43,000 remainder from the \$310,000 settlement was not used to retire debts.¹⁹ The burden was on Applicant to show that the settlement remainder money was either unavailable for debt repayment or was, in fact, used to retire debt. The evidence does not establish circumstances that support the conclusion that these monies were used reasonably, given the amount of outstanding debt. The Judge's application of Mitigating Condition 20(b) is not supported by the record.

Department Counsel notes that the Judge indicated that Mitigating Condition 20(d) partially applied, but she did not state which debts it applied to. Department Counsel referenced the Judge's conclusions where she stated that since her husband's injuries in 2000 and 2002, Applicant has worked diligently, and continues to work, to resolve all unpaid bills, has made major progress in her debt resolution, and her finances are sound. Department Counsel persuasively argues that this analysis is unsupported by the record evidence.

Applicant provided documentation at the hearing that three debts had been paid shortly before the hearing. Documentation purporting to establish payment of two more debts is unclear. The record includes Applicant's testimony that only a few sporadic payments were made between 2004 and 2006 on undisputed medical debts that totaled more than \$7,000. These payments were made in increments of \$25 and Applicant testified that she made fewer than 20 payments on the debts and then stopped making payments, claiming she could no longer do so because she was earning less pay. For two years Applicant talked with the creditor, attempting to get them to settle the debts for a reduced amount. In March 2009, Applicant, according to her testimony, started up \$25 dollar payments again. The only documentary evidence of debt repayment is of a \$100 payment made the day before the hearing.

¹⁹Decision at 5.

The evidence indicates that Applicant's efforts at debt repayment have been sporadic, done little to reduce the overall amount of remaining debt, and have been largely influenced by her attempts to get the creditor to settle for lesser amounts, despite having the means at hand to retire the debt. In the absence of a meaningful track record of repayments, it cannot reasonably be suggested here that Applicant has initiated a good-faith effort to repay her creditors or otherwise resolve her debts, as is required for application of Mitigating Condition 20(d). *See, e.g.*, ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008); ISCR Case No. 01-21386 at 3 (App. Bd. Jun 11, 2003). Moreover, many of Applicant's efforts at debt settlement have been very recent, despite the fact that the debts are a number of years old, and Applicant and her husband received the \$310,000 worker's compensation settlement in August 2006. Department Counsel correctly points out that the Judge did not discuss the timing of Applicant's repayment efforts in her mitigation analysis. The timing of Applicant's actions impacts on the degree to which Mitigating Condition 20(d) applies. The failure of the Judge to analyze the timing of Applicant's actions was error. *See, e.g.*, ISCR Case No. 08-06058 at 6 (App. Bd. Sep. 21, 2009). The timing of Applicant's actions further undercuts the applicability of Mitigating Condition 20(d). There is insufficient evidence in the record to support the applicability of Mitigating Condition 20(d).²⁰

Department Counsel argues that the Judge's application of Mitigating Condition 20(e) constitutes harmful error because the conclusions made thereunder are unsupported by the record evidence or rely on erroneous findings. This decision has already discussed errors with regard to the Judge's findings of fact regarding the \$13,000 power company debt and the six medical debts arising in 2005 which Applicant claimed were work related. Department Counsel asserts that to establish applicability of Mitigating Condition 20(e), Applicant must show more than she simply disagrees with the debt, doesn't recognize the debt, or feels that another party should pay the debt. This assertion has merit. The mitigating condition speaks in terms of having a reasonable basis to dispute the legitimacy of the past due debt and providing documented proof to substantiate the basis of the dispute.

In the case of the six medical debts, Applicant provided no documentation whatsoever that would establish that the insurer is ultimately responsible for the debts. Also, Applicant offered only vague testimony about submitting bills to the insurer and making telephone calls to an insurance representative when describing her efforts to resolve the issue. She was unable to adequately explain why she had not taken the normal course of making claims submissions to either the insurance company or worker's compensation, and was unable to produce a letter she had written to the insurance company. This evidence is insufficient to establish reasonable and meaningful efforts to resolve the medical bills.

²⁰Also relevant to an evaluation of the Judge's conclusion that Applicant's finances "are sound" are the existence of the \$13,000 power company debt, and the \$3,000 worth of medical debt that Applicant believes should be covered by worker's compensation. There is no substantial evidence that these debts are not Applicant's responsibility. They have yet to be resolved. The power company debt alone represents approximately half of the total amount of outstanding delinquent debt alleged in the SOR.

Regarding the \$13,000 power company debt, Applicant did provide a letter from the power company that raised the possibility that the debt might not be hers, but the letter stops short of providing substantial evidence that the debt was illegitimate. While testifying, Applicant was unable to offer any insight as to the basis of her denial of this debt, other than the fact that she did not recognize it.²¹ There is evidence that Applicant made some effort to resolve this debt, but, in terms of mitigation, these efforts are undercut by the fact that they occurred very late in the game— either days before the hearing or immediately thereafter, and are insufficient by themselves to provide a basis for the application of the mitigating condition. The totality of the record evidence regarding these debts does not support application of Mitigating Condition 20(e).

Department Counsel states that the Judge’s whole-person analysis is merely a recitation of favorable facts that are otherwise mentioned within her Guideline F analysis. After review, the Board concludes that the Judge’s whole-person analysis is largely repetitive of her Guideline F analysis, with the exception of a recognition that Applicant and her husband occupied a position of trust when transporting currency for the government and never violated that position, and that a witness trusted Applicant with the care of her mother. The Board concludes that these additional factors do not support an ultimate ruling in Applicant’s favor under Guideline F, given all the contrary evidence in the record.

Applicant asserts that Department Counsel incorrectly presumes that the manner in which the \$310,000 settlement was utilized was a matter within Applicant’s control. While Applicant’s husband received the settlement, the record evidence reveals that the monies were spent to benefit both the husband and Applicant.²² Also, the record contains no evidence that Applicant’s husband prevented Applicant from using settlement proceeds to retire longstanding debts. The burden was on Applicant to establish that the \$310,000 settlement monies were unavailable to her for the purpose of retiring debt. She failed to meet that burden. Applicant’s argument is not persuasive.

The record as a whole does not support a conclusion that Applicant has met her burden of persuasion in light of the *Egan* standard. Therefore, the Judge’s ultimate decision is not sustainable.

²¹ The inclusion of the power company debt on two of Applicant’s credit reports was enough to establish the government’s *prima facie* case regarding the indebtedness.

²²In addition to the new home, which presumably is owned jointly with her husband, expenditures that benefitted Applicant directly included a \$22,000 cash payment for her car and \$7,800 for her mother’s funeral expenses. The evidence also indicates that two lawn tractors were purchased at least partly at Applicant’s direction (Tr. p. 40).

Order

The decision of the Administrative Judge granting Applicant a security clearance is REVERSED.

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