KEYWORD: Guideline F

DIGEST: The fact that a person's debts have been charged off does not mean that the person no longer owes the debts. The Judge did not abuse her discretion in denying Applicant's request for a second delay in the hearing. Adverse decision affirmed.

CASENO: 09-01175.a1

DATE: 05/11/2010

DATE: May 11, 2010

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**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 June 30, 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 February 17, 2010, after the hearing, Administrative Judge Erin C. Hogan 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 findings of fact were based upon substantial record evidence; whether Applicant was denied due process; and whether the

Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge found that Applicant, a computer operator employed by a Defense contractor, had significant delinquent debt for unpaid federal income tax liens and for credit card accounts. The three tax liens total nearly $44,000 while the credit card debts total over $59,000. Applicant explained that he got behind in his taxes due to his having to pay what he viewed as unreasonably large amounts of child support. He also attributed his financial condition to health problems which he had suffered. Applicant plans to file for bankruptcy protection.

In the Analysis portion of the decision, the Judge concluded that Applicant's evidence did not mitigate his failure to pay his income taxes or his large credit card debt, noting that he has not had to pay child support for seven years. Although she acknowledged that Applicant intends to file for bankruptcy, she stated that it was premature to conclude that his debts would actually be discharged. The Judge concluded that Applicant had failed to meet his burden of persuasion under the standard set forth in *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'").

Applicant challenges some of the Judge's findings of fact. For example, he contends that she erred in stating that his debts are unresolved, in light of evidence that some of the credit card debts had been charged off. A delinquent debt is not mitigated because the creditor has charged off the account.[1] However, the record as a whole supports the Judge's conclusion that Applicant owes the debts which formed the basis of her adverse formal findings. Applicant's testimony that he is seeking to discharge his debts in bankruptcy and seeking an accord and satisfaction with the IRS implicitly acknowledges the legitimacy of his debts. Applicant challenges a statement in the Decision to the effect that tax debts are not dischargeable in bankruptcy except in rare circumstances. He testified that his attorney had advised him that the tax liens would be discharged, although he provided no corroboration. In any event, he has not undermined the Judge's conclusion that his tax liens reflect poorly on his judgment and reliability.

Applicant also contends that his credit reports contain inaccuracies and that the Judge erred in stating that the IRS had garnished his wages. On this latter point, Applicant himself testified that the IRS initiated a garnishment action against him to collect past due taxes. Tr. at 25; Government Exhibit 2, Interrogatories, at 10. After reviewing the record, the Board concludes that the Judge's material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Applicant has not identified any harmful error likely to change the outcome of the case. Considering the record evidence as a whole, the Judge's material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007).

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[1]The Board notes that the creditor's choice to charge off a debt for accounting purposes does not affect the debtor's obligations to the creditor. For additional detail, see a U.S. Department of Treasury-administered website: http://www.helpwithmybank.gov/faqs/loan_general.html.

Applicant asserts that prior to the hearing he requested a postponement of the hearing so that he could properly prepare to argue for a grant of his clearance. He notes that his request was denied. Applicant states that the denial greatly altered the outcome of the hearing. Applicant claims that he suffers from a number of physical ailments and that during the hearing he was sick, weak, and exhausted. Applicant's argument does not establish error on the part of the Judge.

Rulings of DOHA administrative judges regarding requests for continuances are reviewed for an abuse of discretion. *See, e.g.*, ISCR Case No. 01-03683 at 4 (App. Bd. Aug. 9, 2002); ISCR Case No. 03-26115 at 2 (App. Bd. Apr. 5, 2007). In this case the record reflects the following: The date of the hearing was originally set in this case for October 22, 2009. On October 20, 2009, Applicant submitted a written request for a postponement to the Judge, stating he needed time to search for a lawyer and requesting that the hearing be held no sooner than November 19, 2009. The Judge granted this request the same day, and a new hearing date of December 2, 2009 was set. On November 20, 2009 Applicant wrote to the Judge and indicated that December 2, 2009 was not a "workable date" in that the attorney he was considering hiring was not available on that date. Applicant indicated he wanted to postpone the hearing until sometime in January 2010. On November 24, 2009, the Judge contacted Applicant and indicated that she was denying his latest request for a delay, noting that additional time had already been granted to him for the purpose of hiring an attorney and he had not done so. The Judge also informed Applicant that if he did obtain an attorney, he should have the attorney contact the Judge if the December 2, 2009 hearing date presented a scheduling conflict. Nothing else transpired before the hearing date. At the hearing the Judge asked the parties if there were any procedural matters to resolve before going forward. Neither party indicated that there were any outstanding procedural matters. The history of the prior requests for continuances was not brought up on the record, and Applicant gave no indication that he was unable to proceed that day. Given these facts, the Board concludes that the Judge acted reasonably and that there was no violation of Applicant's due process rights.

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).

**Order**

The Judge's adverse security clearance decision 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