

KEYWORD: Guideline F; Guideline G; Guideline E

DIGEST: Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. It is reasonable for a judge to expect applicants to present documentation about the satisfaction of specific debts. Adverse decision affirmed.

CASENO: 09-04036.a1

DATE: 12/08/2010

DATE: December 8, 2010

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 February 2, 2010, DOHA issued a statement of reasons (SOR) advising Applicant

of the basis for that decision—security concerns raised under Guideline F (Financial Considerations), Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 30, 2010, after the hearing, Administrative Judge Noreen A. Lynch denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse decision is arbitrary, capricious or contrary to law.

Applicant contends that the Judge’s adverse decision should be reversed because the Judge erred in finding against him with respect to the debt alleged in SOR paragraph 1.b. Applicant argues that the evidence he presented at the hearing establishes that the debt was “in the process of being paid” but that he had not yet received written confirmation to that effect. Attached to his brief, he submits new evidence in the form of documents which delineate the terms of his repayment plan as to that debt and establish that he has made the first payment in accordance with that plan. The Board cannot consider this new evidence on appeal. *See* Directive ¶ E3.1.29. Applicant’s remaining argument does not demonstrate that the Judge’s decision is arbitrary, capricious or contrary to law.

The hearing was held on July 20, 2010. At Applicant’s request, the Judge held the record open until August 5, 2010 for the submission of additional documentation. Prior to the close of the record, Applicant submitted additional documentation relating to other debts alleged in the SOR, but nothing with respect to the \$10,083 debt alleged in SOR paragraph 1.b. Decision at 1-2. The documentation relating to that debt which was submitted with Applicant’s appeal brief is dated August 26, 2010—a date well after the close of the record in the case. In her decision, the Judge noted that Applicant was arranging for a 36-month payment plan that would begin in September 2010 with respect to the debt alleged in SOR paragraph 1.b and had already had his federal tax refund applied to the account in February 2010. Decision at 3. However, she found against him as to that debt because with respect to it and the much larger \$21,405 debt alleged in SOR paragraph 1.a “. . . he has not started the actual payments. He did not present evidence that he and the creditors agreed on a specific payment plan. His efforts are insufficient to carry his burden in this case.” Decision at 7. The Judge’s rationale in that regard is sustainable.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. Promises to pay a debt are not a substitute for a consistent record of timely remedial action. *See, e.g.*, ISCR Case No. 02-31872 at 4 (App. Bd. May 24, 2005). Also, it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts. *See, e.g.*, ISCR Case No. 06-17520 at 2 (App. Bd. Sep. 20, 2007). Based on the record that was before her, it was not unreasonable for the Judge to conclude that Applicant’s financial problems were still ongoing and that he had not met his burden of persuasion as to mitigation. *See, e.g.*, ISCR Case No. 05-07747 at 2 (App. Bd. Jul. 3, 2007). The Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. She found in favor of Applicant under Guidelines G and E, and as to five of the SOR factual

allegations under Guideline F. However, she reasonably explained why the mitigating evidence was insufficient to overcome the government's security concerns.

The Board does not review a case *de novo*. 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 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). Therefore, the Judge's unfavorable security clearance decision under Guideline F is sustainable.

### **Order**

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan  
Michael Y. Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board