

KEYWORD: Guideline F

DIGEST: Applicant’s failure as CEO and sole director to pay corporate debts and file tax returns is sufficient to raise Guideline F security concerns. Adverse decision affirmed.

CASE NO: 10-00065.a1

DATE: 12/14/2010

DATE: December 14, 2010

In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Jeff A. Nagel, Esq., Department Counsel

**FOR APPLICANT**

*Pro se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On March 19, 2010, 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 August 3, 2010, after the hearing, Administrative Judge Jennifer I. Goldstein 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 certain of the Judge’s findings of fact are supported by substantial record evidence; whether the Judge failed to consider all of the

record evidence; whether the Judge erred in her application of the pertinent mitigating conditions; and whether the Judge's whole-person analysis is erroneous. Consistent with the following discussion, we affirm the decision of the Judge.

### Facts

The Judge made the following pertinent findings of fact: Applicant is an employee of a Defense contractor. A divorced father of two, he served in the Navy from 1982 until 1989. After leaving the Navy he worked for a Defense contractor until 1996. He held a security clearance from 1982 through 1996.

Applicant left the employ of the Defense contractor and started his own construction business, filing Articles of Incorporation in 2002. His business did well for a couple of years, but it began having problems due to forest fires and a downturn in the economy. In order to improve his financial condition, Applicant found a job in another industry. This business also suffered from hard economic times.

Applicant has numerous delinquent debts. Applicant failed to file a state corporate tax return for 2007, resulting in a tax lien. He presented no evidence to corroborate his stated intent to negotiate a payment arrangement with his state. Applicant's 2007, 2008, and 2009 Federal corporate tax returns were filed in 2009, 2009, and 2010 respectively. Applicant also owes significant amounts on credit cards.

Applicant enjoys a good reputation for his professional demeanor and his trustworthiness. He has sought assistance of a debt management company, but he defaulted on his agreement with the company because he could not afford the payments.

### Discussion

The Judge noted that Applicant's financial problems were to a certain extent caused by a financial downturn, which was a circumstance outside his control. However, she concluded that Applicant had failed to demonstrate responsible behavior in regard to his debts, nor had he shown a good-faith effort to pay them. Although she acknowledged Applicant's many accomplishments, including his military service, she concluded that the record as a whole did not resolve significant concerns about Applicant's trustworthiness and reliability arising from his financial situation.

Applicant challenges certain of the Judge's findings of fact. In particular, he contends that the Judge erred in finding that several of the debts, including the tax lien, were properly Applicant's. Rather, he contends that these debts were in the name of the corporation and that he is under no obligation to pay them, although he intended to do so.

We review the Judge's findings of facts to determine 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.

The Judge found that the tax liens and two of the credit cards pertained to Applicant's

corporation. There is nothing in the record to suggest that she found or concluded that these particular debts arose from Applicant's private affairs rather than from the exercise of his fiduciary responsibilities to the corporation. We note record evidence that Applicant was the chief executive officer (CEO), the financial officer, and secretary for the corporation. Tr. at 27. We also note that, according to the Articles of Incorporation (Applicant Exhibit B), Applicant was its sole director. Exhibit B provides that the director would not be liable for monetary damages, to the extent allowed by state law. It also provides that the corporation was authorized to indemnify directors and officers to the extent permissible by state law. However, there is nothing in the record to corroborate Applicant's testimony that state law shielded him from the debts at issue in this case.<sup>1</sup> In any event, Applicant's failure as CEO and sole director to pay corporate debts and file tax returns are sufficient to raise security concerns under Guideline F, in that they raise questions about his reliability and trustworthiness. Directive, Enclosure 2 ¶ 18. The Judge's material findings of security concern are sustainable.

Applicant contends that the Judge failed to consider all of the record evidence, for example the economic downturn, his efforts to address his finances, and that he was previously employed for several years with a security clearance. These are matters which the Judge was required to consider, along with the other record evidence. In fact, the Judge mentioned them in her findings and discussed them in the Analysis portion of the decision. However, her ultimate conclusion—that Applicant had not demonstrated a sufficient effort at debt resolution—is sustainable. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. *See, e.g.*, ISCR Case 09-01735 at 2 (App. Bd. Aug. 31, 2010).

The record supports a conclusion 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,'" both as to the mitigating conditions and the whole-person factors. *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.

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<sup>1</sup>Applicant testified that "[a]ccording to the laws of [state], a corporation is its own entity, incurs its own debts and it incurs its own credit. I think there were credit cards in question that illegally turned this into a private matter[.]" Tr. at 26-27.

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