

KEYWORD: Guideline F

DIGEST: Applicant failed to rebut the presumption that the Judge was unbiased. The extent to which an applicant actually handles classified information in his job is not relevant. Adverse decision affirmed.

CASE NO: 10-03656.a1

DATE: 01/19/2011

DATE: January 19, 2011

In Re:)	
)	
-----)	ISCR Case No. 10-03656
)	
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 December 9, 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 October 6, 2010, after the hearing, Administrative Judge Jennifer I. Goldstein denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge’s adverse security clearance decision was arbitrary, capricious, or contrary to law. For the following reasons, the

Board affirms the Judge's unfavorable decision.

The Judge made the following findings of fact: Applicant is a 45-year-old employee of a defense contractor. Applicant is indebted to 15 creditors in the approximate total amount of \$55,032. He has had his home foreclosed upon. He attributed his debts to a period from 2005 to 2009 when he was laid off by his current employer. Applicant was unable to find another job in his field, so he started his own business in marine construction. He financed the business with his savings and credit cards. However, due to several hurricanes in his area from 2006 to 2008, he lost all of his equipment and had to close the business. He was rehired by his current employer in October 2009, but he is only a temporary employee and he has not been able to secure a full time position. He does not feel that he has the funds to make payments on his delinquent accounts. He earns approximately \$48,000 per year, with a disposable income of approximately \$30,000 a year. With the exception of one debt for child support where Applicant established that he set up an allotment to address same, Applicant has either made no payments on his debts or has failed to provide documentation to support claims that the debts have been paid or otherwise resolved. Applicant is well respected by his co-workers and supervisors.

The Judge concluded that: The government established a case for disqualification under Guideline F. His debt is current and ongoing. He has given little indication that his financial situation is likely to improve. His inability to address these debts casts doubt on his current reliability, trustworthiness, and good judgment. Applicant's financial difficulties were caused by his lay-off and the failure of his business. These qualify as conditions that were outside of his control. However the applicable mitigating condition also requires that the individual act responsibly under the circumstances. Other than the child support payments, Applicant has not shown he made any attempt to responsibly address his remaining debts. He has not contacted creditors since the accounts became delinquent. He has not presented documentation to establish payments under any agreement on his consumer debt. He has not sought financial counseling. He has not established whether his child support payments were for current or delinquent obligations. He has not introduced documented proof to substantiate any disputes with his creditors or provide evidence of actions he has taken to resolve issues with creditors. There is no showing that Applicant has initiated a good-faith effort to repay his overdue creditors or otherwise resolve debts. Under the whole-person concept, the evidence establishes that Applicant is a valued employee. However, his choices with respect to his debts do not demonstrate the judgment, reliability, or trustworthiness needed to hold a security clearance.

Applicant argues variously that: (1) the Judge was biased; (2) Applicant did not require access to classified information; (3) the Judge did not take into consideration a credit report showing that he had fewer open accounts and owed less money; (4) the Judge's statement that his debts were current and ongoing was erroneous since the debts are now 4 years old and no longer collectable under the applicable statutes of limitation; and (5) the facts of the case support a granting of his security clearance. Applicant's arguments do not establish error on the part of the Judge.

Applicant's assertion of bias is based solely on the fact that the Judge was once a colleague of the Department Counsel assigned to the case. The Judge fully explained her prior position and association with Department Counsel on the record. There is a rebuttable presumption that a Judge is impartial and unbiased, and a party seeking to overcome that presumption has a heavy burden of

persuasion. *See, e.g.*, ISCR Case No. 07-02253 at 3 (App. Bd. Mar. 28, 2008); ISCR Case No. 02-08032 at 4 (App. Bd. May 14, 2004). Applicant has not overcome that burden in this case.

Applicant asserts that he explained to the Judge that his job did not require access to classified information, and that the Judge's proper consideration of this fact would have provided more "flexibility" in the Judge's analysis. Applicant does not challenge his need for a security clearance, and there is no suggestion in the record that there is any issue over that need, or DOHA's subject matter jurisdiction over the case. Given this posture, the extent to which Applicant actually handles or comes into contact with classified information is not relevant to the Judge's assessment of Applicant's fitness to hold a security clearance. Applicant has failed to demonstrate error on this point.

A Judge is presumed to have considered all the evidence in the record unless she specifically states otherwise. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009); ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008). The credit report Applicant refers to is an abbreviated report listing only a few accounts in collection. It does not establish a significant reduction in Applicant's overall indebtedness, nor did Applicant argue that it did below. At no time during the hearing did Applicant provide other evidence establishing a reduction in his delinquent debt load. Applicant has not overcome the presumption that the Judge considered the record evidence.

Applicant asserts that the Judge's characterization of his delinquent debts as current and ongoing is erroneous in light of the fact that the debts are no longer collectable because of the statute of limitations. Applicant's argument lacks merit. The security significance of long delinquent debts is not diminished merely because the debts have become legally unenforceable owing to the passage of time. Security clearance decisions are not controlled or limited by any statute of limitation, and reliance on the non-collectability of a debt does not constitute a good-faith effort to resolve that debt within the meaning of the Directive. *See, e.g.*, ISCR Case No. 00-0030 at 3 (App. Bd. Sep. 20, 2001); ISCR Case No. 07-16841 at 4 (App. Bd. Dec. 19, 2008). A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather a security clearance adjudication is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness to make a decision about the applicant's security eligibility. Accordingly, even if a delinquent debt is legally unenforceable under state law, the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner. ISCR Case No. 00-0345 at 3 (App. Bd. Dec. 12, 2001); ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003); ISCR Case No. 07-09966 at 2-3 (App. Bd. Jun. 25, 2008).

Applicant cites evidence he maintains supports a granting of his security clearance. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. *See, e.g.*, ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). In this case, the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors.

The Judge properly considered the whole pattern of Applicant's handling of his finances, including those matters over which Applicant had no control. She adequately discussed why the disqualifying conduct established under Guideline F was not mitigated.

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for her 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 ultimate unfavorable security clearance decision 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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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