

KEYWORD: Guideline F

DIGEST: The Judge concluded that Applicant had done little to resolve his delinquent debts until after a Government investigator confronted him during the clearance process. The Judge noted Applicant’s evidence that he had entered into a payment arrangement with some creditors but found this to be of limited weight insofar as the payments were set to begin in the future. Adverse decision affirmed.

CASE NO: 11-02441.a1

DATE: 02/15/2013

DATE: February 15, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-02441
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 18, 2012, DoD 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 November 26, 2012, after the hearing, Defense Office of Hearings and Appeals (DOHA)

Administrative Judge Juan J. Rivera denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision.

The Judge made the following findings pertinent to the issue raised on appeal: Applicant worked for a Government agency, but he lost his job when his security clearance was withdrawn. He is being sponsored for a clearance by a contractor. Applicant is currently separated from his third spouse. He retired from the Army after 26 years of service. These years included time spent on active duty and with the National Guard. Applicant's duties included those related to finance.¹ He received numerous awards and decorations while serving in the Army, and he was selected to participate in a training and development panel. Applicant cared for his mother for 21 years, providing her with financial support. He acquired responsibility for some of her medical expenses.

After retiring from the Army, Applicant experienced several periods of unemployment. His most recent job loss occurred in 2010, when he lost his clearance.

Applicant has filed for bankruptcy protection five times, three under Chapter 13 and two under Chapter 7. He has been discharged in bankruptcy twice, once under each Chapter. He has had a house go into foreclosure. In addition, he has nine delinquent consumer debts and two federal tax liens which total \$45,000. He failed to file tax returns and pay income tax for tax years 2003 through 2006. He did not file his returns because he did not have any deductions to write off.

Applicant claimed to be making payments on some small debts not alleged in the SOR. He claimed that he has resolved several of his SOR debts and claimed to have a payment agreement with the IRS, but he presented no corroborating evidence. He claimed that the mortgage companies had forgiven the deficiency judgement from the foreclosure sale of his home but again presented no corroboration. Applicant retained the services of a credit restoration company to dispute some of his debts.

In his 2009 security clearance application (SCA), Applicant failed to disclose four of his bankruptcy actions, all nine consumer credit debts alleged in the SOR, the two federal tax liens, and his failure to file and pay his taxes.

After losing his job, Applicant lacked the financial means to pay his debts. He lives with his girlfriend, and they follow a budget. He received some financial counseling during the bankruptcy process.

In the Analysis, the Judge concluded that Applicant's financial circumstances raised security concerns under Guideline F. However, he also concluded that Applicant had failed to meet his burden of persuasion as to mitigation. He stated that Applicant had done little to resolve his

¹Applicant Exhibit 1, a *curriculum vitae*, shows that, while in the Army, Applicant had assignments that required him to obligate Government funds, engage in contracts for purchase on behalf of the Government, and monitor a multimillion dollar budget.

delinquent debts until after a Government investigator confronted him during the clearance process. He noted Applicant's evidence that he had entered into payment arrangement with some creditors but found this to be of limited weight insofar as the payments were set to begin in the future. The Judge noted Applicant's unemployment and his marital problems, but he concluded that Applicant had not demonstrated responsible action in regard to his debts.² He stated that Applicant's financial problems were ongoing and extensive and that Applicant had not demonstrated that the financial problems were unlikely to recur.³ In the whole-person analysis, the Judge cited to Applicant's evidence of his good service to the country, both in the military and as a civilian employee. He also noted that some of Applicant's financial problems were affected by circumstances outside his control. However, the Judge stated that Applicant should have known about the importance of maintaining financial responsibility, given his years of holding a clearance while in the military and his experience as a finance official. The Judge also stated that Applicant's failure to mention a substantial portion of his financial problems on his SCA diminished his credibility and case for mitigation.⁴

Applicant contends that the Judge did not consider evidence favorable to him, such as his service to the U.S., his having availed himself of the credit restoration company, and his domestic relations issues. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-02311 at 4 (App. Bd. Nov. 26, 2012). The Judge made findings regarding Applicant's favorable evidence, and he discussed them in his Analysis. Applicant has not rebutted the presumption that the Judge considered all of the record evidence.

Applicant requests that we grant him a probationary clearance in order to give him time to demonstrate debt resolution. However, we do not have the authority to grant an interim, conditional, or probationary clearance. *See, e.g.*, ISCR Case No. 10-06975 at 2 (App. Bd. Apr. 19, 2012).

Applicant contends that, unless he gets a clearance, he will not be able to obtain the job he is seeking. The effect that an adverse decision may have upon an applicant is not a relevant or material consideration in evaluating his security eligibility. *See, e.g.*, ISCR Case No. 11-04395 at 2-3 (App. Bd. Oct. 5, 2012).

Applicant has challenged the Judge's whole-person analysis. However, after considering the record as a whole, we conclude that the Judge has complied with the requirements of Directive, Enclosure 2 ¶ 2(a), in that he considered the totality of Applicant's circumstances in reaching his decision. *See, e.g.*, ISCR Case No. 10-03598 at 3 (App. Bd. Oct. 10, 2012).

The record supports a conclusion that the Judge examined the relevant data and articulated

²Directive, Enclosure 2 ¶ 20(b): "the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances[.]"

³Directive, Enclosure 2 ¶ 20(a): "the behavior . . . 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[.]"

⁴Conduct not alleged in a SOR may be considered for a number of reasons, including assessing an applicant's credibility and evaluating his case for mitigation. *See, e.g.*, ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006).

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). *See also* Directive, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

Order

The Decision is **AFFIRMED**.

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

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

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board