

KEYWORD: Guideline F

DIGEST: A Judge is presumed to have considered all of the evidence in the record. The Appeal Board has declined to hold that a debtor’s obligations are discharged by actions of the creditor, such as sale of the debt or a charge off of the account. Adverse decision affirmed.

CASE NO: 11-08274

DATE: 05/02/2013

DATE: May 2, 2013

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In Re:)	
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-----)	ISCR Case No. 11-08274
)	
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 June 20, 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 January 23, 2013, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Nichole L. Noel 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: (1) whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.

The Judge found: Applicant has \$120,000 in delinquent debt alleged in the SOR. This is comprised of four debts in the amount of \$16,000, \$8,730, \$27,000 and \$68,000. After he was unable to receive assistance from his creditors or a debt-to-wealth program, Applicant stopped making payments on his debts in 2008. Since 2008, Applicant has focused his efforts on catching up on other financial obligations not listed in the SOR. He has notified the four creditors listed in the SOR that he plans to initiate lawsuits against them for alleged violations of the State's Deceptive Trade Practices Act. His complaint is that the creditors failed to accurately report information to the credit reporting bureaus. To date, Applicant has not resolved any of the \$120,000 in delinquent debt. Although he admits to incurring the debt, he believes that the debts are uncollectible under the statutes of limitation for the two states involved. Applicant currently lives modestly and within his means with the help of a budget. He is current on his recurring financial obligations.

The Judge concluded: Applicant admitted each allegation in the SOR, without explanation. However, in a post-hearing submission, he retracted his admissions and denies that he owes the four delinquent debts alleged in the SOR, claiming that these debts are now uncollectible because of the statute of limitations. Under the perception that he had been treated unfairly by his creditors, Applicant decided not to repay his legitimate debts after he lost a home to foreclosure. Instead, he decided to rely on the statute of limitations. The reliance on the statutes of limitation fails on two grounds. First, the assertion is not supported by the record. Applicant did not submit any information regarding the specific terms of the credit agreements, which would have provided a reasoned determination as to which statute of limitation applied. Second, 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. 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. Applicant's decision not to pay his debts reflects poorly on his judgment, reliability, trustworthiness, and ability to protect classified information. Applicant's decision also shows an unwillingness to take responsibility for his actions. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision.

Applicant argues that the Judge failed to consider evidence submitted by him in a post-hearing submission. He referenced the Judge's mentioning of the operation of the statutes of limitation and asserts that the statute of limitations argument was only a small part of what Applicant raised in the post-hearing submission. Applicant then goes into great detail as to why he does not owe the debts alleged in the SOR. The gravamen of his position as stated in the post-hearing submission is that credit card receivables are typically sold into a secondary market, resulting in a situation where the entities reporting the debts have been paid in full. His position as stated in the post-hearing submission was that he incurred the debts originally, and at one time they were owed, but that they were no longer owed. Applicant engages in very technical arguments as to why,

through the vagaries of the secondary market, the debts he owed no longer exist. He states that the Judge failed to consider this evidence.

A Judge is presumed to have considered all the evidence in the record unless he or she specifically states otherwise. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009). The Board finds no reason to believe that the Judge did not properly weigh the evidence or that she failed to consider all the evidence in the record. *See, e.g.*, ISCR Case No. 11-06622 at 4 (App. Bd. Jul. 2, 2012). We have considered the totality of Applicant's arguments on appeal and find no error in the Judge's ultimate conclusions regarding mitigation.

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).

Applicant's appeal brief essentially argues for an alternate interpretation of the record evidence. The Board concludes that the Judge appropriately weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and adequately discussed why the disqualifying conduct established under Guideline F was not mitigated.

Contrary to Applicant's assertions, the Judge found that Applicant's SOR debts remain outstanding and unsatisfied. This finding is supported by the evidence. The Board has previously reviewed and declined to adopt arguments which rely on claims that a debtor's obligations are discharged as a result of actions by the creditor such as sale of the debt or a charge off of the account. *See*, ISCR Case No. 06-07554 (App. Bd. Oct. 12, 2007); ISCR Case No. 08-07264 (App. Bd. Oct. 15, 2009); and ISCR Case No. 09-01175 (App. Bd. May 11, 2010).

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 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 ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge 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: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board