

KEYWORD: Guideline F

DIGEST: The Judge’s material findings of security concern are supported by substantial record evidence. The Board does not evaluate a challenged sentence in isolation but by reference to the Decision as a whole. Adverse decision affirmed.

CASE NO: 11-10633.a1

DATE: 03/21/2013

DATE: March 21, 2013

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In Re:)	
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-----)	ISCR Case No. 11-10633
)	
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 October 3, 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 hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr., 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 the Judge erred in his findings of fact and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant has worked for a Defense contractor since early 2011. He has not previously held a security clearance. Applicant began college in 2001, financing his education and living expenses with credit cards and a signature loan from a credit union. A mediocre student, he spent much of his time under academic warning, probation, and academic suspension.

In 2004, Applicant decided to change his major. He wanted to major in finance, which required him to enter the school of management at his university. He failed to comply with the requirements for entering that school, which entailed a formal application and screening interviews. Applicant claimed, without corroboration, that there was a time in which his transcript showed that he was in the management school.

In fact, the college placed Applicant in the school of humanities, although Applicant either did not know this or did not understand its significance. He expected to graduate in May 2006, and he had been offered a job contingent on his receipt of a degree in finance. He learned that he would not be receiving this degree, because he had never been admitted to the proper school. He was informed that he could not transfer to the management school and retake his finance courses. His university did not permit him to take a course more than once. He started his education over, but he did poorly, resulting in academic suspension. He eventually received a degree in 2012.

Applicant was terminated from his job because he did not have a finance degree. He stopped paying off his debts, and they were eventually sold to collection agencies. He engaged in settlement negotiations regarding one of the credit card debts, and the creditor offered to settle the \$68,000 claim for a little over \$15,000, to be made in three payments. Applicant never received assurance that the creditor owned the debt and that it would be removed from his credit report, so the parties remain at an impasse. He is in a similar situation with another creditor concerning a medical debt.

Applicant got in touch with his credit union about another debt and was informed that the credit union would not accept payment because the debt had been charged off. Applicant did not corroborate his claim that the credit union would not give him a letter to that effect.

Applicant hired a law firm to dispute the debts alleged in the SOR. The firm sent letters to Applicant's creditors, but the record does not contain any responses the firm may have received. Applicant has not corroborated his claim (1) to have received financial counseling and (2) to have sufficient funds to pay his debts once settlement agreements are reached. He stated that his law firm advised him not to pay the debts until the creditors establish their legal rights to payment. His current plan is to rely on the statute of limitations and to wait for his debts to age off his credit reports.

Applicant enjoys a good reputation for honesty and trustworthiness. Other than the SOR debts, his finances are current.

The Judge's Analysis

Concluding that Applicant's financial circumstances raised Guideline F security concerns, the Judge found that he had failed to demonstrate mitigation. He stated that Applicant's problems originated with his failure to understand the graduation requirements of his university. The Judge also stated that Applicant had failed to act responsibly in regard to his debts, declining an opportunity to settle two significant ones. The Judge stated that it was not unreasonable for Applicant to desire documentation from the creditor, although had he accepted the creditor's offer in writing and noted that he was settling the debt in full, he could have protected his legitimate interests. The Judge concluded that Applicant's debts are recent and that the circumstances of the debts were not outside his control. He also found that Applicant's failure to follow up on offers to settle his debts undermined his claims of good-faith and that he had not corroborated his claim to have received counseling. The Judge concluded that Applicant's plan is to simply outlast his creditors until the debts fall off his credit reports. Despite Applicant's favorable character evidence, the Judge concluded that he had failed to demonstrate mitigation.

Discussion

Applicant has challenged some of the Judge's findings of fact. For example, he states that the Judge erred in finding (1) that he had not been admitted to the school of management of his university, (2) that he had been required to go through a screening process for acceptance into that school, and (3) that he had made no effort to resolve his debts. On this last point, the Decision does not assert that Applicant had made no effort, only that such effort as he did undertake was not reasonable. Moreover, we conclude that the challenged findings about Applicant's status regarding the management school are not erroneous.¹ Considering Applicant's appeal argument in light of the record as a whole, we conclude that the Judge's material findings of security concern are supported by substantial record evidence or constitute reasonable inferences from the evidence. Applicant has not demonstrated that the Judge's findings contain any harmful error. *See, e.g.*, ISCR Case No. 11-08844 at 3-4 (App. Bd. Jan. 10, 2013).

Applicant takes issue with the statement in the Analysis that Applicant could have bound his creditor by accepting its offer in writing. We do not view individual sentences in isolation. *See, e.g.*, ISCR Case No. 09-07219 at 5 (App. Bd. Sep. 27, 2012). While the Judge's treatment of this matter appears to be somewhat speculative, Applicant's argument does not undermine the Judge's

¹ “[Judge]: Well then, how did you end up not being admitted to the School of Management? [Applicant]: There was an extra process that needed to be taken place [sic]. [Judge]: That you needed specifically to apply . . . that you had to undergo some kind of a screening with . . . professors . . . [Applicant]: go through an interview process . . . [Judge]: Okay. And then when you hadn't done that, by default, then they dumped you into Humanities and Social Sciences. [Applicant]: Yes.” Tr. at 85-86.

application of the mitigating conditions and whole-person factors. The gravamen of the Judge's decision is that Applicant's financial circumstances did not originate from circumstances outside his control and that he had not acted responsibly in regard to them, nor had he demonstrated good-faith efforts to resolve debts. The record supports the Judge's interpretation of Applicant's circumstances.

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.'" *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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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

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