

KEYWORD: Guideline F

DIGEST: The record provides no reason to believe that Applicant was not adequately informed of her right to counsel or of her other rights concerning the hearing. Applicant acquired additional significant debts after having been discharged on bankruptcy. This is sufficient to raise Financial Considerations security concerns. Adverse decision affirmed.

CASENO: 11-12204.a1

DATE: 07/11/2013

DATE: July 11, 2013

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| In Re:                           | ) |                        |
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| -----                            | ) | ISCR Case No. 11-12204 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |
|                                  | ) |                        |

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Steven A. Suralie, Personal Representative

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 3, 2013, 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 May 9, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative

Judge LeRoy F. Foreman 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 Applicant was denied due process; whether the evidence was sufficient to raise security concerns; whether the Judge failed to consider all of the evidence; 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**

The Judge made the following findings pertinent to the issues raised on appeal: Applicant worked for a Defense contractor from 2005 to early 2010, at which time she was laid off. She was unemployed until May 2011, when she began working for her current employer, also a Defense contractor. While out of a job she received unemployment compensation. She served in the military in the early 1980s. She held a security clearance in the military and again while working for her first contractor employer.

Applicant married in 1984 and divorced in 2008. In 1993, she and her husband were discharged in Chapter 7 bankruptcy. Their debts included medical bills, credit cards, and a delinquent home loan. Since that time, Applicant has acquired additional delinquent debts, for medical bills, cable services, credit cards, student loans, etc. She testified that these debts arose as a consequence of her divorce. In addition, she incurred expenses associated with job-related relocations. She also admitted that some of her debts were due to bad decisions, such as credit card expenditures undertaken with insufficient thought to the long-term consequences and cosmetic treatments.

After receiving the SOR Applicant contacted some of her creditors, but she was not able to settle her debts. She has not contacted any of her SOR creditors since late 2012. She has addressed other debts not alleged in the SOR. For example, she resolved a delinquent car loan through a voluntary repossession and she has been negotiating a settlement of a debt to the IRS. She also paid off several student loans by withdrawing money from her retirement account.

### **The Judge's Analysis**

The Judge concluded that Applicant's financial circumstances raised concerns under Guideline F. He further concluded that she had not met her burden of persuasion as to mitigation, citing to a paucity of evidence concerning the circumstances of her bankruptcy; the number of her unresolved debts; and her apparent lack of a plan for resolving the SOR debts. The Judge noted that circumstances outside Applicant's control affected her financial condition, although some of her debts had become delinquent and had been entered into collection status before her divorce and unemployment. However, he noted that she had not made recent contact with her creditors and concluded that she had failed to demonstrate responsible conduct in regard to her debts. In the whole-person analysis, the Judge cited to evidence of Applicant's military service, her having held a clearance without incident or concern, and her having paid off her student loans. He stated, however, that Applicant has demonstrated a pattern of incurring debt without considering the consequences and that she had been passive in the face of her financial situation.

## Discussion

Applicant contends that she was denied due process. She states that she was out of her element at the hearing and that she was overmatched by Department Counsel. She argues that the Judge should have stopped the hearing and rescheduled it after she had had an opportunity to obtain counsel or other assistance.

We note that the record contains a letter from Department Counsel to Applicant advising her of the nature of her upcoming hearing. Among other things, the letter advised her of her right to hire an attorney or be represented by some other person and of her right to present evidence and cross examine witnesses. The letter gave Applicant a brief overview of how the hearing would be conducted and informed her of the documents that Department Counsel intended to submit. Hearing Exhibit 1, dated March 27, 2013. In addition to this letter by Department Counsel, the Chief Administrative Judge also sent Applicant pre-hearing guidance containing much the same information, though without including a proposed evidence list. This letter from the Chief Judge specifically stated that Applicant had the right to hire an attorney. Finally, at the beginning of the hearing, the Judge advised Applicant of her right to counsel, among other things. Tr. at 5. Moreover, the Judge left the record open for ten days after the hearing at his own initiative to enable Applicant to submit additional evidence. Tr. at 63. The record provides no reason to believe that Applicant was not adequately informed of her right to counsel or of her other rights concerning the hearing. Having chosen to represent herself, she cannot fairly complain about the quality of her self-representation or seek to be relieved of the consequences of her decision.<sup>1</sup> She has failed to demonstrate that she was denied the due process afforded by the Directive. *See, e.g.*, ISCR Case No. 10-02364 at 2 (App. Bd. Apr. 4, 2011).

Applicant contends that her circumstances do not raise security concerns. She argues that her prior bankruptcy action was not relevant because it occurred a long time ago. She also argues that her response to her debts as a whole shows responsibility and should not raise concerns as to her trustworthiness. In a DOHA proceeding, the Government must present substantial evidence concerning controverted allegations. *See, e.g.*, ISCR Case No. 10-03668 at 2 (App. Bd. Oct. 5, 2012). In the case before us, Applicant admitted all of the allegations in the SOR. Insofar as these allegations were not controverted, the Government bore no obligation to present evidence of them. Nevertheless, the Government did present two security clearance applications by Applicant and her answers to interrogatories. The Government also offered three credit reports, which in and of themselves normally can constitute substantial evidence of Guideline F security concerns. *See, e.g.*, ISCR Case No. 08-06058 at 6 (App. Bd. Sep. 21, 2009). This evidence, read alongside Applicant's testimony at the hearing, support the Judge's material findings that, after having been discharged in bankruptcy, Applicant acquired additional significant delinquent debts. These findings are sufficient to raise Financial Considerations security concerns, thereby giving rise to Applicant's burden of persuasion as to mitigation. Directive ¶ E3.1.15.

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<sup>1</sup>Applicant contends that, in her naivete, she failed to offer into evidence a certain character letter, thereby evidencing her relative disadvantage in presenting her case. However, the record contains two character letters, including a letter by the same writer and containing substantially the same information as the one she referenced in her appeal brief. This letter was attached to Applicant's response to the SOR.

Applicant cites to record evidence, including her good security record, her efforts to pay off some of her debts, her unemployment, and her job-related moves. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 09-05833 at 2 (App. Bd. Jun. 21, 2010). The Judge made findings about the cited evidence and discussed it in his analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence. In support of her appeal, Applicant has submitted evidence from outside the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. *See also* ISCR Case No. 09-05833, *supra*. Applicant asserts that if she cannot obtain a clearance she will have to find another job. As we have previously noted, the adverse impact of an unfavorable decision is not relevant in evaluating an applicant's eligibility for a security clearance. *See, e.g.*, ISCR Case No. 06-23613 at 4 (App. Bd. Feb. 4, 2013).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The 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