

KEYWORD: Guideline F

DIGEST: Applicant has not demonstrated any harmful error. Adverse decision affirmed

CASENO: 11-13984.a1

DATE: 02/20/2014

DATE: February 20, 2014

In Re:	)	
	)	
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	)	
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 5, 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 December 9, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Matthew E. Malone 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; whether the Judge's application of the mitigating conditions was erroneous; and whether the Judge's whole-person analysis was erroneous. Consistent with the following, we affirm the decision.

### **The Judge's Findings of Fact**

Applicant is a 50-year-old employee of a Defense contractor. He has served in his current employment since 2011. He holds a Master's degree. He enjoys an excellent reputation for the quality of his work performance, as well as for his reliability. He earns about \$100,000 a year from this job. Applicant served in the U.S. military until 2006, retiring as a major. His retirement pay is about \$40,000 a year, and he also receives \$12,000 a year in disability benefits. While in the military he deployed in support of combat operations and received multiple awards. He has held a clearance throughout most of his military career.

Applicant has been married three times, and he has one child from a previous relationship, as well as three from his second marriage. He pays about \$1,500 a month in child support. In addition, he supports his wife's two children.

After his retirement from the military, Applicant was unemployed for nearly two years. He defaulted on a loan for real estate classes, eventually settling it for less than the total obligation. During his period of unemployment he lived on his retirement and disability pay, attempting to start up a home-based business. Applicant relied on credit cards to meet living expenses. A loan and a credit card account became delinquent and were the subject of judgments against Applicant. Other credit card accounts also became delinquent. One of the debts was forgiven by the creditor, which resulted in a tax liability that Applicant paid on the day of the hearing. Applicant also resolved other SOR debts near the date of the hearing or thereafter. In addition, Applicant had become delinquent on other credit card accounts with one of his SOR creditors in 2003 and 2004.

In a clearance interview in mid-2011, Applicant said he would begin resolving his debts by the end of the year. He did not begin paying off his delinquent debts upon obtaining employment in 2008 because of other obligations, such as legal fees associated with his second divorce, as well as his child support requirements.

Applicant has taken several vacations outside the U.S. since 2004, including two during his unemployment. These have cost, on average, about \$2,000. Applicant has not incurred any new unpaid debts and his income is sufficient to meet all of his current expenses. He has more than \$1,800 left over at the end of each month, although he has \$21,000 in student loans that were deferred until shortly after the hearing.

## **The Judge's Analysis**

The Judge concluded that Applicant had failed to meet his burden of persuasion regarding mitigation of the concerns raised by his financial circumstances. Though acknowledging that Applicant had paid off all of his SOR debts by the close of the record, and that he had acquired no further delinquencies, the Judge nevertheless found that Applicant's security-significant financial circumstances were recent and were not isolated instances of an otherwise clean credit record. He also cited to evidence that Applicant had experienced delinquencies while on active duty. Although noting Applicant's unemployment, the Judge stated that this was, to a certain extent, a result of Applicant's own choice in that he had tried to start up a home-based business during this period. The Judge opined that it was also Applicant's choice to rely on credit cards to pay ordinary expenses. The Judge stated that Applicant was not likely to commit criminal acts to pay off debts, since his delinquent debts were resolved. Nevertheless, the Judge found that Applicant's circumstances impugned his trustworthiness and his judgment. In the whole-person analysis, the Judge cited to Applicant's good military record and the high-quality of his work performance. However, Applicant's failure to resolve his debts in a timely fashion raised doubts that the Judge concluded had not been mitigated by the favorable evidence that Applicant had supplied.

## **Discussion**

Applicant contends that the Judge erred in some of his findings of fact. He cites to the finding that he had acquired delinquencies while on active duty, asserting that it was not correct. However, this finding is based on Applicant's answers to questions posed during his clearance interview. During this interview, he stated that, in the 1990s, he obtained three credit card accounts with the same creditor listed in one of the SOR allegations. "All accounts fell delinquent for several months between 2003 and 2004, exact dates and amounts unrecalled." Interview Summary at 5, included in Government Exhibit 2, Answers to Interrogatories, dated March 13, 2013. Applicant certified that this summary was accurate, save for some minor corrections on unrelated portions of the interview. Insofar as Applicant was on active duty during this time, the contested finding is supported by substantial record evidence. We have examined the rest of Applicant's challenges to the Judge's findings and conclude that the findings are based on substantial evidence or constitute reasonable inferences from the evidence. To the extent that there are any errors in them, the errors are harmless. *See, e.g.*, ISCR Case No. 10-00046 at 3 (App. Bd. Oct. 1, 2013).

Applicant cites to favorable evidence, such as his having resolved his SOR debts and his excellent work performance. The Judge made findings about these matters and discussed them in his analysis of Applicant's case. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Nor has he provided a reason to conclude that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 12-02141 at 2 (App. Bd. Nov. 13, 2013). In support of his appeal, Applicant has submitted new evidence in the form of character references that post-date the close of the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. *See also* ISCR Case No. 11-07169 at 1 (App. Bd. Nov. 18, 2013).

Applicant has challenged the Judge’s application of the mitigating conditions. He disagrees with the Judge’s statement that his debts are recent, arguing that all of his SOR debts were incurred prior to 2008, that they have been paid, and that he has incurred no newer ones. However, a Judge can reasonably conclude that even a debt incurred long ago but which is ongoing at or near the close of the record is recent within the meaning of the Directive. *See, e.g.*, ISCR Case No. 08-09511 at 2 (App. Bd. Mar. 3, 2010). In the past we have cited the timing of debt resolution as a significant factor in evaluating an applicant’s case for mitigation. *See, e.g.*, ISCR Case No. 09-07551 at 4 (App. Bd. Mar. 1, 2013). We find no reason to disturb the Judge’s treatment of the mitigating conditions. Moreover, we conclude that the Judge’s whole-person analysis complies with the requirements of the Directive in that he considered Applicant’s circumstances in light of the record as a whole. *See, e.g.*, ISCR Case No. 10-06089 at 3 (App. Bd. Sep. 11, 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: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

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