

KEYWORD: Guideline F

DIGEST: Applicant failed to demonstrate a nexus between his breakup with his girlfriend and other circumstances beyond his control and his debt problems. Evidence that Applicant has credit card debt that is growing contradicts the Judge’s conclusion that his financial problems are under control. Favorable decision reversed.

CASE NO: 11-13999.a2

DATE: 06/23/2014

DATE: June 23, 2014

In Re:)	
)	
-----)	ISCR Case No. 11-13999
)	
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 March 22, 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 August 28, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Wilford H. Ross granted Applicant’s request for a security clearance. Department Counsel appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. On February 3, 2014, the Appeal Board remanded the Decision to the Judge to address certain errors. On March 10, 2014,

the Judge issued his remand Decision, again granting Applicant a clearance. Department Counsel again appealed pursuant to the Directive.

Department Counsel raised the following issue on appeal: whether the Judge's favorable decision was arbitrary, capricious, or contrary to law. Consistent with the following, we reverse the Judge's favorable security clearance decision.

The Judge's Findings of Fact

Applicant's SOR listed 10 delinquent debts, totaling approximately \$79,593. These debts included unpaid Federal income taxes. He has a payment plan with the IRS, which originally covered tax years 2007, 2008, and 2009. Taxes for the first of these years have been paid. The plan has been amended, however, to include taxes owed in 2010 and 2011. As of the close of the record, Applicant owed the IRS \$10,012.77. He is paying \$175 a month on this plan. Applicant's tax problems originated in errors he committed in preparing his own taxes. He also admitted that he made budgeting errors that contributed to his tax problems. He now utilizes a tax preparation service to ensure that his taxes are correctly filed. Applicant had delinquent taxes owed to his state for tax years 2007, 2008, and 2009. He has satisfied these debts.

Applicant also owes delinquent debts on seven credit cards, in amounts ranging from \$1,374 to \$21,880. Applicant has entered into an agreement with a debt resolution company, and these credit card debts are being resolved. He also owes \$82 for a cell phone. He has attempted to resolve this debt, but has not had success. The account appears to be closed.

Applicant's financial problems began when he had a "bad breakup" with his girlfriend. Decision at 4. She lost her job, and he took on all the expenses of the relationship, including her mother's medical and subsequent funeral expenses. He has also experienced unexpected dental expenses. Applicant attempted to resolve his problems himself, but he was not successful. He lives frugally and has demonstrated that he the financial ability to pay both his current indebtedness, as well as to pay off his delinquent debts. He acknowledged that in the past he has provided financial assistance to family and friends to the extent that was not in his best interest.

The Judge's Analysis

The Judge concluded that Mitigating Conditions 20(a)¹ and (b)² apply to Applicant's circumstances. Regarding (b), he stated that Applicant's problems resulted for the most part from circumstances outside his control and that he acted responsibly in addressing his debts. Although

¹Directive, Enclosure 2 ¶ 20(a): "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not case doubt on the individual's current reliability, trustworthiness, or good judgment[.]"

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

Applicant has not received financial counseling, the Judge concluded that “there are clear indications that the problem is being resolved or is under control[.]”³ He also concluded that Applicant had “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]”⁴

Discussion

Department Counsel contends that the Judge’s decision failed to establish a mitigating nexus between events in Applicant’s life and his financial problems. He also maintains that because the evidence does not provide a clear picture as to the cause or causes of Applicant’s delinquent indebtedness, it is not possible to conclude that Applicant’s financial problems, once solved, will not reoccur, Department Counsel also argues that Applicant did not begin to address his overdue debt until recently and this does not constitute evidence that Applicant acted reasonably and exercised good judgment. The Board finds these arguments persuasive.

The standard in security clearance decisions “is that a clearance may be granted only when ‘clearly consistent with the interests of national security.’” *Department of the Navy v. Egan*, 484 U.S. 518,528 (1988). “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b). In deciding whether the Judge’s rulings or conclusions are erroneous, the Board will review the Judge’s decision to determine whether: it does not examine record evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgement; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Department Counsel asserts that the dates on which Applicant’s financial obligations became delinquent are a significant aspect of the case for purposes of ascertaining the significance and relationship between purportedly mitigating events and the delinquent indebtedness. The Board agrees. Department Counsel notes that Applicant’s federal tax delinquencies covered a period between 2007 and 2011, the commencement of which was two years after the breakup with his girlfriend, an event that the Judge cites as a principal cause of the indebtedness. Department Counsel also notes that Applicant’s state tax delinquencies covered a period from 2007 to 2009 and his consumer credit accounts first became delinquent in 2008 and individual accounts continued to become delinquent until 2011. Given the time frames, with a significant gap between the purported cause of the financial difficulties and the onset of the various debt arrearages, there is no evidence to explain how the breakup with the girlfriend caused the problems. Applicant’s testimony merely cites the breakup as a cause of his monetary problems without going into detail as to how it caused the trouble.

³Directive, Enclosure 2 ¶ 20(c).

⁴Directive, Enclosure 2 ¶ 20(d).

Additionally, the Judge cites tax preparation issues as another mitigating source of Applicant's trouble. Tax preparation was a matter within Applicant's control. Given this, the Judge's decision does not adequately explain why Applicant's tax preparation issues were a matter in mitigation. Similarly, the decision to attend funerals out of state was a matter within Applicant's control. Bills arising from medical issues may have been matters of necessity, but, as with the other purportedly mitigating events cited by the Judge, there is no explanation as to how they caused Applicant's sizable debt arrearages. There is insufficient evidence to support the Judge's application of Mitigating Condition ¶ 20(b).

Regarding the other Guideline F mitigating conditions, Department Counsel argues that there was insufficient evidence to support the Judge's application of the mitigating conditions in light of the contrary evidence in the same record. Department Counsel's arguments have merit. Department Counsel correctly points out that there is nothing to support the Judge's conclusion that Applicant's indebtedness occurred under circumstances unlikely to recur, since the evidence does not establish with any specificity how Applicant's delinquencies arose. The Judge's conclusion that Applicant's efforts at debt resolution were made in good faith is undercut by evidence that he did not initiate attempts at repaying his debts until after he applied for a security clearance and did not hire his debt resolution company until January, 2013. The Judge's conclusion that Applicant's debt problem is being resolved or is under control is contradicted by the fact that his credit card debt continues to grow, and the amount of payments made on the debt to date have not substantially lessened Applicant's debt load. The objective evidence of amounts owed and the amount Applicant is paying per month indicate that he will be engaged in debt reduction longer than the three years he has projected.

Once disqualifying conditions are found applicable, Applicant bears the burden of establishing mitigation. The Judge's conclusions concerning mitigation run contrary to the weight of the record evidence and fail to consider important aspects of the case. Viewed as a whole, the record does not support a conclusion that Applicant has mitigated the Guideline F concerns consistent with the standard set forth in *Egan*. The Judge's favorable findings under this Guideline are not sustainable.

Order

The Decision is **REVERSED**.

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

Dissenting Opinion of Administrative Judge James E. Moody

I disagree with my colleagues' resolution of this case. The Judge's findings, viewed in light of the record as a whole, are sufficient to persuade a reasonable person that Applicant's security-significant conduct is being resolved. I believe that the record supports a whole-person conclusion that Applicant has developed a reasonable plan for debt repayment and that he has demonstrated a serious intent to effectuate that plan. *See, e.g.*, ISCR Case No. 09-08462 at 3 (App. Bd. May 31, 2011). We need not agree with a Judge's decision to find it sustainable. *See, e.g.*, ISCR Case No. 07-15696 at 2 (App. Bd. Feb. 20, 2009).

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board