

KEYWORD: Guideline F

DIGEST: The Judge concluded that the fact that Applicant had three outstanding credit card debts that remained unpaid meant that the debts have not been mitigated by the passage of time. This conclusion is sustainable on this record. Adverse decision affirmed.

CASENO: 12-01212

DATE: November 6, 2013

In Re:)	
)	
-----)	ISCR Case No. 12-01212
)	
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 8, 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 20, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA)

Administrative Judge James F. Duffy 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: whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's decision.

The Judge found: Applicant is 40 years old. Applicant has four delinquent debts totaling \$39,981. Applicant is a 20-year veteran of the Navy. While in the Navy, Applicant deployed frequently and his wife handled their finances and was responsible for paying their bills. In about 2007 she obtained a second mortgage loan on their home in both their names without consulting him. Some of the debts were credit cards that Applicant's wife maintained. He acknowledged that he was responsible for the second mortgage loan and the credit card debts. Applicant attributed his current financial problems to his wife's unemployment for about a year and a half between 2008 and 2010. While she was unemployed their only source of income was his military pay which was insufficient to pay their bills. They then used the credit cards. After his wife obtained employment in 2010, the creditors wanted lump-sum payments that they could not afford and the creditors would not agree to repayment plans. All of Applicant's conversations with his creditors were over the telephone. He has not sent or received correspondence regarding proposed repayment plans. A personal financial statement prepared in February 2013 did not list any payments toward Applicant's debts. Applicant made a payment on his second mortgage in July 2013 that brought the account current. Applicant indicated that he has not sought financial counseling or debt consolidation services.

The Judge concluded: Applicant accumulated delinquent debts that he was unable or unwilling to satisfy for an extended period. His wife's unemployment was a condition beyond their control that contributed to their financial problems. Applicant must also show, however, that he acted responsibly under the circumstances. The second mortgage debt is being resolved. Nevertheless, Applicant provided no proof of payments toward the three credit card debts alleged in the SOR. Applicant had no documentation to confirm his proposed repayment offers with these creditors, and maintains that his communications with the creditors has been by telephone. He has neither obtained financial counseling nor consulted with a debt consolidation company in an attempt to resolve the debts. He presented no evidence to show that he has been setting aside money so that he could make lump-sum payment offers. His testimony that the creditors refused to enter into repayment plans is insufficient to establish that he acted responsibly in attempting to resolve the three credit card debts during the last three years. His debts are ongoing, significant, and cast doubt on his current reliability, trustworthiness and good judgment. Those debts are not under control and are not being resolved. Applicant presented no realistic plan for resolving them. Despite Applicant's honorable service in the Navy, and the fact that he is considered a valued employee at his current company, he has failed to mitigate the security concerns arising under Guideline F.

Applicant asserts that he has entered into a Chapter 13 bankruptcy reorganization plan to mitigate his outstanding debts. This representation of his recent efforts to address his debts does not appear in the record below, and is thus a new matter. The Board cannot consider new evidence. *See* Directive ¶ E3.1.29.

Applicant states that the financial information and credit report presented at his hearing were outdated and "made to appear recent." He then states that the few items in his credit report that are

delinquent are older and date from the period of his wife's unemployment. The Board construes this argument as an argument that the Judge erred by not mitigating the debts because of their age. Applicant has not established error on the part of the Judge.

As the Judge noted in his decision, the three credit card debts at issue remain unpaid and are thus ongoing. This fact provided a reasonable basis for the Judge to conclude that the debts have not been mitigated by the passage of time. Unpaid, delinquent debts constitute a continuing course of conduct, thereby undermining any claim that the debts are not recent within the meaning of the Directive. *See, e.g.*, ISCR Case No. 09-01309 at 4 (App. Bd. Apr. 29, 2010).

The Board does not review a case *de novo*. 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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board.a1

DATE: 11/06/2013