

KEYWORD: Guideline F

DIGEST: In concluding that Applicant had not mitigated the security concerns arising from his delinquent debts, the Judge stated that Applicant had known of the Government’s concern over his finances since the time of his clearance interviews. Despite this, Applicant made no payments on any of his debts. Adverse decision affirmed.

CASENO: 12-03984.a1

DATE: 06/10/2014

DATE: June 10, 2014

In Re:)	
)	
-----)	ISCR Case No. 12-03984
)	
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 September 23, 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 March 21, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA)

Administrative Judge Claude R. Heiny denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: 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 works for a Defense contractor and seeks to maintain a security clearance. He enjoys a good reputation for dedication and for his work ethic. He served on active duty with the U.S. military from 1999 until 2005. He deployed four times during his military service. He holds a 50% disability rating from the Department of Veterans Affairs, receiving about \$1,000 a month in disability pay.

Applicant's SOR lists 22 delinquent debts, totaling over \$31,000. The debts are for such things as credit cards, medical expenses, telephone services, etc. He has made no payments on his delinquent debts and does not intend to do so. He intends to stay current with his more recent debts but will permit the delinquent ones to be removed from his credit report with the passage of time.

He employed a credit restoration service, that advised him not to pay any account that was delinquent or in a collection status but to keep up with his current bills. He stated that he should not pay any delinquent debt until the credit service had verified it. The only recent counseling he has received was a telephonic conversation with someone in 2012.

In January and February 2012, Applicant was asked about his delinquent debts during a clearance interview. The interviewer asked him about each of his delinquent accounts except for two. He was not able to provide any information about his medical debts except that he owed them.

In responding to interrogatories in 2013, Applicant stated that he had made no payments on his debts. He stated that his net monthly remainder was \$3,000. In 2012 his joint household income was over \$100,000. Previously, in 2008, he had experienced a substantial drop in income because his wife stopped working due to illness. During 2008 and 2009, the couple used credit cards to make up for lost income. Applicant's wife obtained a job in 2009 and has been employed ever since. The couple separated for a while and the wife filed for divorce, but they later reconciled and returned to living together.

Applicant is current on his mortgage, making \$800 monthly payments on a balance of \$63,000. In 2011, he bought a pickup truck for \$38,290 and is not behind on his vehicle payments. His wife's car is paid off. He has about \$25,000 in a retirement plan, \$2,000 in checking and \$4,000 in savings. He has two credit cards, and his wife has four.

The Judge's Analysis

In concluding that Applicant had not mitigated the security concerns arising from his delinquent debts, the Judge stated that he had known of the Government's concern over his finances

since the time of his clearance interviews in January and February 2012. Subsequent interrogatories about his finances further placed him on notice, as did the SOR. Despite this, he made no payments on any of his debts. Though noting circumstances beyond Applicant's control that affected his financial condition, such as his wife's unemployment, the Judge stated that Applicant had failed to demonstrate responsible action in regard to his debts.¹ He also stated that Applicant had not demonstrated a good-faith effort to pay off his debts or contact his creditors.

In the whole-person analysis, the Judge cited to evidence favorable to Applicant, such as his wife's illness and consequent loss of employment. He also noted that the couple is paying their current debts and are not living beyond their means. The Judge acknowledged that Applicant had served honorably in the Air Force and had experienced a service-connected disability. However, he also cited to evidence unfavorable to Applicant, which he concluded outweighed the favorable evidence. In particular, he reiterated that Applicant had been on notice of the Government's concern about his debts for two years. He stated that despite having sufficient income Applicant does not intend to pay off any of his delinquent debts, leaving the Judge with doubts about his fitness for a clearance.

Discussion

Applicant takes issue with the statement in the Analysis to the effect that he had been on notice of the Government's concern about his debts since his clearance interviews. He contends that he relied on the interviewer's statement to the effect that there is nothing in Applicant's financial background that would make him susceptible to coercion. However, this statement summarizes Applicant's answers to the interviewer's questions. It does not represent the interviewer's opinion of Applicant's security worthiness. *See, e.g.*, ISCR Case No. 11-08063 at 4 (App. Bd. Jul. 19, 2013). In any event, the Judge's opinion that Applicant had been provided with ample notice of the Government's concern about his debts is supported by the record. *See* ISCR Case No. 11-13626 at 3 (App. Bd. Nov. 7, 2013) (Things such as the applicant's clearance interview put him on notice of the Government's concern about delinquent debts). Applicant himself admits that the SOR put him on notice, yet even so he took no action to resolve his debts and testified at the hearing that he did not intend to do so. Tr. at 42. We find no error in the challenged statement.

Applicant cites to evidence of his having consulted with a credit counselor. To the extent that he is arguing that the Judge did not consider this evidence, he has not rebutted the presumption that a DOHA Judge has considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-06824 at 2 (App. Bd. Apr. 9, 2012). He states that his decision to stop paying his debts in 2008 and 2009 was a one-time occurrence. However, an unpaid debt is a continuous course of conduct for the purposes of DOHA adjudications. *See, e.g.*, ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012).

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

¹Directive, Enclosure 2 ¶ 20(b): "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances[.]"

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 Ra’anan

Michael 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