

## KEYWORD: Guideline F

DIGEST: Even if debts have been resolved a Judge may still consider the underlying circumstances for what they may reveal about the applicant's judgment and reliability. The government need not wait until an individual mishandles or fails to safeguard classified information before it can make an unfavorable security clearance decision. Even those with good prior records can encounter circumstances in which their judgment and reliability might be compromised. Adverse decision affirmed.

CASENO: 17/02599.a1

DATE: 01/18/2019

DATE: January 18, 2019

## **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 August 29, 2017, 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 October 12, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Elizabeth M. Matchinski 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 has a bachelor’s degree and requires a clearance as a condition of his current employment by a Defense contractor. He is married with two grown children. Applicant has numerous delinquent debts. The ones that the Judge found against him were for credit card accounts and a line of credit provided by a bank. Applicant attributed his financial problems to several causes—his failure to monitor spending or maintain a budget; his having refinanced his home to pay off credit card debt; and his mismanagement of an inheritance that he received upon the death of his mother.

Applicant sought the assistance of an attorney to file for Chapter 13 bankruptcy on his behalf. Accordingly, he stopped paying on credit cards, as they were to be included in the bankruptcy petition. Applicant’s attorney did not file a petition, however, because he “kept trying to figure out the right formula.” Decision at 5. Subsequently Applicant discovered a means of debt resolution propounded by a radio personality. He began selling some of his assets in order to build up a cash emergency fund, and he sold off a vehicle. However, he still did not have enough funds to pay off his credit card debts.

Although Applicant stated on more than one occasion that he would pay all of his debts, as of the close of the record he had failed to do so. For example, he claimed that he would resolve his largest account, a credit card debt for nearly \$23,000, by withdrawing from his retirement fund, but he provided no evidence that this debt had been paid or settled. Neither did he demonstrate resolution of two relatively small credit card accounts. He did present evidence that the creditor of a \$4500 charged-off account had forgiven \$3,472 and that he testified that he had paid taxes on this amount. In the Analysis, however, the Judge stated that it was not clear from the record whether Applicant still owed some portion of the debt that might be attributable to interest or penalties.

Applicant self-reported his financial problems to his employer, and he has handled classified information properly. A supervisor from a previous job recommended him for a clearance, provided he addresses his financial situation.

## The Judge's Analysis

The Judge concluded that Applicant's circumstances raised three disqualifying conditions: inability to satisfy debts, a history of not meeting financial obligations, and consistent overspending.<sup>1</sup> Regarding four debts, including the largest addressed above, she concluded that Applicant had not demonstrated mitigation. She noted that creditors were willing to settle, although Applicant did not have on hand sufficient funds to make even the reduced amounts. She stated that Applicant does not have pending settlement offers or plans. She noted Applicant's evidence that his difficulties were, in large part, due to his having failed to budget his expenses, his reliance upon credit cards, etc. She also noted evidence that Applicant had engaged in new spending by using discretionary funds that could have been directed toward debt payment. In the whole-person analysis, the Judge acknowledged that Applicant had properly handled classified information while undergoing financial difficulties. She stated, however, that once a security concern arises, there is a strong presumption against the grant or renewal of a clearance.

## Discussion

Applicant argues that he has resolved all of his debts. His argument includes assertions from outside the record, which we cannot consider. Directive ¶ E3.1.29. In any event, even if debts have been resolved a Judge may still consider the underlying circumstances for what they may reveal about the applicant's judgment and reliability. *See, e.g.*, ISCR Case No. 16-02246 at 2 (App. Bd. Dec. 8, 2017). He cites to aspects of the record that he contends are favorable to him, such as his efforts at debt settlement, the debt that the creditor forgave, his full disclosure of his financial problems to his employer, his credit reports which he argues show that his debts have been resolved, and his good security record. On this last point, the government need not wait until an individual mishandles or fails to safeguard classified information before it can make an unfavorable security clearance decision. Even those with good prior records can encounter circumstances in which their judgment and reliability might be compromised. *See, e.g.*, ISCR Case No. 15-07941 at 2 (App. Bd. Nov. 29, 2018). Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *Id.* Applicant cites to a portion of his clearance interview summary which states that he cannot be blackmailed or coerced due to his financial difficulties. However, this represents the interviewer's summary of Applicant's answers, not the interviewer's independent judgment as to Applicant's eligibility for a clearance. Even if it did represent the interviewer's opinion it would not bind the Government in evaluating Applicant's case. *See, e.g.*, ISCR Case No. 15-03995 at 3 (App. Bd. Apr. 24, 2017).

Given Applicant's history of overspending and evidence that as of the close of the record he still had not resolved his delinquent debts, we find no error in the Judge's overall adverse conclusion. The Judge examined the relevant evidence 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.'"

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<sup>1</sup>*See* Directive, Encl. 2, App. A ¶¶ (a), (c), and (e).

*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). See also Directive, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility 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: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy  
Administrative Judge  
Member, Appeal Board