

KEYWORD: Guideline F

DIGEST: Applicant attributed his financial problems to his having lived beyond his means and to his unemployment. His irresponsible spending led to judgments being levied against him. The Judge concluded that the receipt of the SOR precipitated Applicant's bankruptcy filing. Applicant provided no current budget. He has no track record of payment on the student loans, nor did he submit character references, his work record, or evidence of community involvement. Adverse decision affirmed.

CASENO: 16-00291.a1

DATE: 03/19/2019

DATE: March 19, 2019

In Re:)	
)	
-----)	ISCR Case No. 16-00291
)	
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 20, 2016, 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 20, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr., 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 and Analysis

Applicant has been employed by a Defense contractor since October 2013. He experienced unemployment from September 2012 until he assumed his current duties. He held a clearance from 2002 until 2007. Applicant’s SOR alleges numerous delinquent debts. The ones at issue in this appeal are student loans. Applicant filed for Chapter 7 bankruptcy protection in September 2016, and his debts were discharged the following January. All of his SOR debts were covered by the bankruptcy discharge, except for the student loans. Applicant entered into a repayment plan for them in October 2017.

Applicant attributed his financial problems to his having lived beyond his means and to his unemployment. His irresponsible spending led to judgments being levied against him. The Judge concluded that the receipt of the SOR precipitated Applicant’s bankruptcy filing. Applicant provided no current budget. He has no track record of payment on the student loans, nor did he submit character references, his work record, or evidence of community involvement.

The Judge concluded that Applicant’s financial problems are ongoing and did not result from circumstances outside his control, given his admission of irresponsible spending. However, he also stated that Applicant’s financial problems are unlikely to recur. The Judge noted that Applicant admitted to his interviewer in 2015 that his student loans would not be discharged but did not arrange a payment plan until after the hearing.

Discussion

Applicant’s brief includes information not contained in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Applicant notes the Judge’s comment that he did not provide character evidence. He points out that his mother appeared at the hearing and testified that he is trustworthy. We conclude that this error is harmless, in that it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No.17-01181 at 4 (App. Bd. Apr. 30, 2018).

Applicant cites to his prior belief that his student loans were covered by bankruptcy. He states that he set up a payment plan as soon as he discovered otherwise and that the timing of his bankruptcy filing after receipt of the SOR was merely coincidental. He also cites to the Judge’s

conclusion that his problems are unlikely to recur. On this last point, the mitigating condition in question also requires that the financial circumstances do not cast doubt on the individual's current reliability, trustworthiness, and good judgment. Directive, Encl. 2, App. A ¶ 20(a). The Judge did not make a finding that this criterion had been satisfied. All in all, Applicant has not shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-02463 at 2 (App. Bd. Sep. 10, 2018).

Applicant notes that the Judge's decision was issued long after the hearing. Applicant has not shown how this delay caused the Judge to commit a factual or legal error based on the record that was before him. *See, e.g.*, ISCR Case No. 12-09421 at 3 (App. Bd. Oct. 2, 2018); *see also* DISCR Case No. 92-0009 (App. Bd. May 11, 1994).

The record supports a conclusion 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 Judge's adverse 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, 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