

KEYWORD: Guideline F

DIGEST: Although Applicant has pointed out some errors, none of them merit any corrective action. Even when considered collectively, the errors are harmless. Adverse decision affirmed.

CASENO: 18-00754.a1

DATE: 06/17/2019

DATE: June 17, 2019

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In Re:)	
)	
-----)	ISCR Case No. 18-00754
)	
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 23, 2018, 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 April 11, 2019, after the hearing, Administrative Judge Paul J. Mason denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: (1) whether the Judge erred in his findings of fact and (2) whether the Judge’s decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact and Analysis

Applicant is married with two children. He pays child support for one of them. He served honorably in the military and has held a security clearance since 1996.

The SOR alleged 20 delinquent debts, including judgments, that total about \$104,000. In his response to the SOR, Applicant denied five of the debts because he was not familiar with them and admitted the others. The debts became delinquent between 2011 and 2017, and the judgments were filed between 2012 and 2014.

In 2013, Applicant experienced a reduction in his annual earning from \$114,000 to \$90,000 when his employer, a defense contractor, changed. In February 2014, he was laid off from his job, began working in a temporary position in July, and was hired for his present position in August of that year. His current annual earnings are \$105,000. He attributed his financial problems to his pay reduction in 2013 and his unemployment in 2014.

Applicant paid one alleged debt through a garnishment in 2016 and 2017. In 2018, he filed Chapter 13 bankruptcy to prevent his home from being foreclosed. He has made three payments totaling about \$2,100 under the bankruptcy. His bankruptcy payments will increase over time to more than \$2,000 a month, which he currently cannot afford. He anticipates that he will be able to afford the payments once he successfully negotiates a home loan modification and renegotiates a new Chapter 13 plan. He believes all of the SOR debts are listed in his bankruptcy; however, one is not listed.

Applicant’s debts are numerous and ongoing. Due to a lack of evidence showing actions to address the debts before his bankruptcy, his debts continue to cast doubt on his current reliability, trustworthiness, and good judgment. He encountered unforeseen events that negatively impacted his financial situation, but failed to establish that he acted responsibly under the circumstances. Despite filing bankruptcy, he has not shown his financial problems are under control. In the whole-person analysis, the Judge noted that “[h]aving been fully employed for more than four years, it is reasonable to expect that Applicant would have taken more responsible and timely action to address the listed debts.” Decision at 7. The Judge found against Applicant on all of the alleged debts.

Discussion

Applicant contends the Judge erred in various findings of facts. Whenever a Judge's findings of fact are challenged, we examine them to see if they are supported by substantial evidence, *i.e.*, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See, e.g.*, ISCR Case No. 16-04094 at 2 (App. Bd. Apr. 20, 2018). In this case, Applicant, for example, points out that the Judge stated in the synopsis of the decision that he was laid off for three months in 2014 when he was actually laid off for six and a half months. In the findings of fact, however, the Judge accurately listed the time period that Applicant was unemployed as reflected in his security clearance application (Government Exhibit (GE) 1) and his testimony (Tr. at 8, 30-31, and 34-35). Applicant also challenges the Judge's finding that one of the SOR debts was not listed in his bankruptcy. Applicant is correct that the debt in question was listed in Schedule G - Executory Contracts and Unexpired Leases of the bankruptcy petition. Applicant further notes that he has a daughter and son as opposed to the Judge's finding that he has two daughters. Although Applicant has pointed out some errors, none of them merit any corrective action. Even when considered collectively, the errors are harmless. *See, e.g.*, ISCR Case No 11-15184 at 3 (App. Bd. Jul. 25, 2013)(An error is harmless if it did not likely affect the outcome of the case).

Applicant also requests that, if we decide to affirm the Judge's unfavorable clearance decision, we grant him a favorable public trust determination. We have no authority to grant that request. The Appeal Board neither has fact-finding authority nor authority to change the nature of the adjudication below. *See, e.g.*, ISCR Case No. 14-02394 at 3 (App. Bd. Aug. 17, 2015). We also note that the adjudicative guidelines applied in this case are used whether a case is a security clearance adjudication or public trust adjudication (*i.e.*, a "sensitive position" adjudication). *See* Directive, Encl. 2 ¶¶ B, C, D.8, and E; and Encl. 2, App. A ¶ 1. Additionally, Applicant requests that we waive the one-year bar for reapplying for a public trust position following an adverse decision. *See* Directive ¶ E3.1.37. We have no authority to waive the one-year reapplication bar. *See, e.g.*, ISCR Case No. 08-08606 at 2 (App. Bd. Dec. 4, 2009).

The balance of Applicant's arguments amounts to a disagreement with the Judge's weighing of the evidence. These arguments, however, are not sufficient to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

Applicant has not established that the Judge committed any harmful error. 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.'" *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