

KEYWORD: Guideline F

DIGEST: A review of Applicant’s first and second Chapter 7 bankruptcy petitions confirm that the liabilities listed in the above findings are accurate. Applicant has failed to establish the Judge erred in his findings regarding his liabilities. Adverse Decision Affirmed

CASE NO: 20-01379.a1

DATE: 09/22/2021

DATE: September 22, 2021

In Re:)	
)	
-----)	ISCR Case No. 20-01379
)	
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 11, 2020, 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 decision on the written record. On July 9, 2021, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert Robinson Gales 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: whether the Judge erred in his findings of fact and 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 is in his forties, has never been married, and has two children. He attended a university but has not received a degree. He was granted a security clearance nearly 20 years ago.

“Applicant has a history of financial difficulties going back over a decade that have resulted in many accounts becoming delinquent. The SOR alleged three financial issues regarding bankruptcies” Decision at 2. In October 2010, Applicant received a Chapter 7 bankruptcy discharge. Between December 2010 and January 2016, he filed Chapter 13 bankruptcy on seven occasions. Each Chapter 13 bankruptcy was dismissed. In August 2019, he again received a Chapter 7 bankruptcy discharge.

Although Applicant noted he was burdened with paying his father’s funeral expenses, he “maxed out” his credit cards on travel, clothing, and dining out. Decision at 3. “He acknowledged that he had over-extended himself financially, and did not think he would be able to pay his debts, so he filed for bankruptcy. (Items 8 at 9) With respect to his travel expenses, between August 2015 and April 2019, Applicant took several international trips to Mexico (three occasions), as well as trips to Jamaica, Barbados, Belize, Honduras, and Costa Rica. (Item 3, at 22-43), with his most recent trip occurring in April 2019 – one month before he filed his May 2019 bankruptcy petition.” *Id.* His current monthly income and expenses are unknown. He owes over \$83,000 in student loans.

Applicant did not establish that he took any good-faith efforts to resolve his debts. His repeated reliance on bankruptcy proceedings to discharge his debts continues to cast doubt on his current reliability, trustworthiness, and good judgment.

Discussion

On appeal, Applicant stated, “The liabilities debts that were reported by Administrative Judge in the Statement of The Case were incorrect and that my total liabilities debts in the previous years have been corrected/updated, satisfied and reduced to much lower amounts estimated around \$170,000 dollars.” Appeal Brief at 2. It is unclear which liabilities Applicant is referencing. To the extent he is challenging the Judge’s findings about his liabilities reflected in the Chapter 7 bankruptcy petitions, we find no errors in those findings. In this regard, the Judge made the following findings:

[In his first Chapter 7 bankruptcy petition, Applicant] reported approximately \$257,986 in liabilities with creditors holding secured claims (state tax lien; a judgment lien, a vehicle, and a mortgage); \$4,000 in liabilities with creditors holding unsecured priority claims (federal income tax); and \$69,137 in liabilities with creditors holding unsecured nonpriority claims (various commercial accounts, credit cards; a time-share; and student loans).

* * *

[In his second Chapter 7 bankruptcy petition, Applicant] reported approximately \$199,829 in liabilities with creditors holding secured claims (a mortgage), and \$99,956 in liabilities with creditors holding unsecured priority claims (domestic support obligations to two separate women, commercial accounts, credit cards; and student loans). [Decision at 3.]

A review of Applicant's first and second Chapter 7 bankruptcy petitions confirm that the liabilities listed in the above findings are accurate. Applicant has failed to establish the Judge erred in his findings regarding his liabilities.

Applicant points out that he is in good standing on his current debts, he is enrolled in a student loan forgiveness program, and he has created a budget to manage all his expenses and lives within his means. He argues that his "past financial history is a thing of the past" and should not preclude him from being granted a security clearance. Appeal Brief at 1. This argument is not persuasive. It is well established that, even though debts may have been discharged in bankruptcy, a Judge may still consider the underlying circumstances for what they reveal about an applicant's judgment and reliability. *See, e.g.*, ISCR Case No. 16-02246 at 2 (App. Bd. Dec. 8, 2017). The Judge's conclusion that Applicant history of financial problems continues to cast doubt on his security clearance eligibility is sustainable. In other words, Applicant's arguments are not sufficient to establish that the Judge's adverse conclusion was arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. Applicant also notes that the loss of his security clearance will have an impact on his livelihood. The Directive, however, does not permit us to consider such consequences. *See, e.g.*, ISCR Case No. 19-02020 at 2 (App. Bd. Oct. 26, 2020).

Applicant has failed to establish the Judge committed 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