

The Judge's Findings of Fact and Analysis

Applicant is in his fifties, served honorably in the military, and has earned a bachelor's degree. He is married and has two sons with special needs. His wife works as an educator, and their combined annual gross income is nearly \$200,000.

The SOR alleges that Applicant filed for a Chapter 13 bankruptcy in 2005 that was discharged in 2011; that he filed for Chapter 13 bankruptcy again in 2017 with liabilities of approximately \$300,000; that he was delinquent under the Chapter 13 payment plan by August 2019 in the amount of \$22,000; that he was indebted to the Internal Revenue Service (IRS) for delinquent federal taxes for tax years 2011–2015 in the approximate amount of \$25,500; and, that he misused a company credit card in September 2017 to pay for repairs to his home.

In responding to the SOR, Applicant admitted all allegations other than the federal tax indebtedness. Regarding the IRS debt, Applicant asserted that the delinquent taxes were under a good-faith payment plan with the IRS prior to his 2017 bankruptcy filing, that they were included in his Chapter 13 payment plan, and that the trustee is currently making payments on the indebtedness. Applicant failed to provide documentation for his claim that he was making good-faith payments to the IRS before filing his 2017 bankruptcy petition.

Regarding his indebtedness in general, Applicant testified at hearing that his financial problems were caused by a 2011 house fire, his wife's medical issues, his two sons' special needs diagnoses, the predatory practices of their mortgage company, and his wife's excessive spending. Regarding his 2017 Chapter 13 bankruptcy filing, Applicant testified that he was delinquent on his payment plan in 2018 and again in 2019, that the plan was modified to increase his payments, and that he was current on the payment plan as of the date of the hearing. Post-hearing, Applicant submitted documents that indicate he is making payments to the bankruptcy trustee, but not the full payments required, and that he is again delinquent.

Applicant has not learned from his past mistakes or made responsible and appropriate financial adjustments to prevent new debt. Moreover, Applicant's intentional misuse of his employer's credit card in 2017 is troubling and has serious security significance. Having been delinquent on his Chapter 13 payment plan in 2018 and 2019, Applicant is again delinquent. There are not clear indications that his financial problems are being resolved. None of the mitigating conditions fully apply.

Discussion

Applicant has not challenged any of the Judge's specific findings of fact. Rather, he contends the Judge erred in failing to comply with the provisions in Executive Order 10865 and the Directive by not considering all of the available evidence, by not giving the proper weight to mitigating evidence, and by failing to properly apply the whole-person concept. For example, Applicant argues that the Judge failed to properly weigh the number of hardships that were outside of his control and the positive actions he has taken to remediate his debts, to include filing for Chapter 13 bankruptcy and making payments under the plan. None of Applicant's arguments, however, are enough to rebut the presumption that the Judge considered all of the record evidence

or to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020). Although we give due consideration to the Hearing Office cases that Applicant’s counsel has cited, they are neither binding precedent on the Appeal Board nor sufficient to undermine the Judge’s decision. *See, e.g.*, ISCR Case No. 17-02488 at 3–4 (App. Bd. Aug. 30, 2018). Moreover, the cited cases are easily distinguishable on their facts.

Applicant has failed to establish that the Judge committed any harmful error or that he should be granted any relief on appeal. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the record. “The general standard is that a clearance may be granted only when ‘clearly consistent with 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 national security.”

Order

The decision is **AFFIRMED**.

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Member, Appeal Board