KEYWORD: Guideline F

DIGEST: The Judge's finding that Applicant received no credit counseling beyond that required for his bankruptcy is consistent with the record evidence and refuted Applicant's argument on appeal. Adverse decision affirmed.

CASENO: 14-05728.a1

DATE: 10/09/2015

DATE: October 9, 2015

In Re:	)	
---------	)	ISCR Case No. 14-05728
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

<u>APPEARANCES</u>

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 January 15, 2015, 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 July 21, 2015, 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 issues on appeal: whether the Judge's findings of fact contained errors; whether the Judge's application of the mitigating conditions was erroneous; 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

From 2002 until 2012 Applicant worked for a company that he and others had founded. Due to financial problems, the company reorganized in such a way that Applicant became an employee. Eventually, management laid Applicant off. During the time leading up to his layoff, Applicant earned less money, so he relied on credit accounts for routine expenses.

Subsequently, Applicant obtained a diploma in a specialized, technical field of study. He borrowed money for his tuition, a debt that grew to $31,000. While in school, Applicant relied on credit accounts for living expenses. He was unemployed until late 2013. During his unemployment, he did not attempt to communicate with creditors in resolving his delinquent debts. After he completed his security clearance application, he filed for bankruptcy protection. His SOR lists five debts, four credit accounts and the loan for his educational expenses. These debts, along with others, were discharged through Chapter 7 bankruptcy.

Applicant makes about $80,000 annually, and his wife about $20,000. He has received no credit counseling beyond what was required during the bankruptcy process. He did not provide a budget to show how he will avoid financial difficulty in the future.

The Judge's Analysis

The Judge concluded that Applicant's financial problems were recent and could not be classified as infrequent. The Judge also concluded that Applicant did not demonstrate responsible action in regard to his debts until his bankruptcy petition. He also noted Applicant's having taken out a $31,000 education loan while unemployed. He concluded that Applicant's failure to address his debts except through bankruptcy did not constitute a good-faith effort to pay his debts. The Judge concluded that Applicant had not demonstrated a track record of debt resolution. He stated that it is still an open questions as to whether Applicant's problems are actually under control.

Discussion

Applicant challenges some of the Judge's findings of fact. He contends that he did not live off of his credit cards and that he did receive financial counseling. However, examining the challenged findings in light of the record as a whole, we conclude that they are supported by "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.

Applicant notes that he received credit counseling as part of the bankruptcy process. However, the Judge's finding was that Applicant had received no credit counseling beyond that which was required for his bankruptcy, which is consistent with the record that was before him and is not refuted by Applicant's argument on appeal. In addition, the finding about Applicant's having used credit accounts for living expenses is a reasonable inference from his hearing testimony.[1] We find no error in the Judge's findings of fact. Even if the findings contain errors, they did not likely affect the outcome of the case and, therefore, are harmless. The Judge's material findings of security concern are based upon substantial record evidence or constitute such inferences as a reasonable person might draw from the evidence. *See, e.g.*, ISCR Case No. 11-10255 at 4 (App. Bd. Jul. 28, 2014).

Applicant argues that, on the whole, he has been financially sound throughout his life. To the extent that he is arguing that the Judge extended too much weight to his more recent circumstances, we find no reason to conclude that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-00251 at 4 (App. Bd. Oct. 10, 2014).

Applicant has cited to other Hearing Office cases that, he contends, are similar to his own and support his effort to obtain a clearance. We have considered these cases as persuasive authority. However, Hearing Office cases are binding neither on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 11-14723 at 3 (App. Bd. Oct. 3, 2014). In any event, the cases that Applicant cites have significant differences from his own. We find in them no reason to conclude that the Judge's overall decision was erroneous.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. Even if an applicant has actually resolved debts, whether through payment, bankruptcy, or some other means, a Judge may still consider the circumstances underlying the debts for what they may reveal about the applicant's eligibility for a clearance. *See, e.g.,* ISCR Case No. 14-02394 a 3 (App. Bd. Aug. 17, 2015). "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, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

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[1]"[Q]: Is it safe to say that during this period you were using the accounts listed in the [SOR] to supplement your living expenses? [A]: [C]ertainly at certain points. I wouldn't say that it was the entire time." Tr. at 52.

Order

The Decision is **AFFIRMED**.

Signed; Michael Ra’anan
Michael Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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