

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 30, 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 December 10, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello 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 he was denied due process 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

A high school graduate, Applicant served in the military from 1986 to 1992, at which time he received an honorable discharge. He has a 23-year-old son and two stepdaughters who are 26 and 29 respectively. He provides financial assistance to his son, who lives with him, as well as to his 11-year-old Godson, who also lives with him.

Consequent to problems with making mortgage payments, Applicant filed for Chapter 13 bankruptcy protection in 2003, which was dismissed a year later. Applicant and his wife encountered more problems with making mortgage payments, so they filed again for Chapter 13 bankruptcy and were discharged in 2009. Following this discharge, Applicant got behind on his mortgage payments once again. He attempted to work with the mortgage company to resolve a delinquency on this loan and participated in mediation two or three times. He also attempted to negotiate a deed-in-lieu of foreclosure. Although he believed that he had an agreement, the lender proceeded with foreclosure action. The house needed many repairs, and it had mold, causing the family to move out in 2011. Applicant made his last mortgage payment in 2009. The Judge found that Applicant had provided no explanation for why he became delinquent again following his bankruptcy discharge. Although the lender sued Applicant for the amount owed on the house, the suit was eventually dropped. After the hearing Applicant submitted a document showing that a deed in lieu of foreclosure was completed on December 7, 2012. The debt is listed as charged-off and it does not appear that the creditor is seeking to collect on this debt.

Applicant co-signed a lease for his stepdaughter, agreeing to make payments. She moved out, though the landlord renewed the lease. He stated that after the lease expired, his stepdaughter renewed the lease without his signature. Applicant stated that he disputed the amounts claimed by the landlord and that he had contacted him. He provided no documentation showing what he or his stepdaughter had done to resolve the debt.

During his interview in 2012, Applicant was made aware of other debts that subsequently were alleged in the SOR. One was for medical services, Applicant stating that he was not aware of it. He provided no evidence that he had resolved these debts. Another was for telephone services, and Applicant admitted that he had not paid it.

Applicant also failed to file his 2014 Federal income tax return. He stated that he ran out of time, and the return never got filed. He does not know if he owes taxes or is due a refund. He denied having any other delinquent debts and estimated that he has a \$400 monthly remainder after paying his bills. Applicant's wife also works. Applicant does not have a budget and has not sought financial counseling. In a post-hearing submission he stated that he intended to seek financial counseling. In this same submission he attributed his problems to "family situations, illnesses, and the economy." Decision at 4. He did not elaborate. He stated that his wife suffered from an illness that put a strain on their finances. He stated that health insurance and medical expenses have affected their financial situation.

The Judge's Analysis

The Judge concluded that Applicant had not provided enough evidence to mitigate the concerns in his case. She cited to his 2012 interview, which placed him on notice that his debts were a concern, yet he did nothing about them prior to the hearing. She noted his failure to file his income taxes, concluding that his failure to have done so, along with his other financial problems, casts doubt on his reliability, trustworthiness, and judgment. The Judge noted Applicant's contention that his financial difficulties were affected by circumstances outside his control but concluded that he had not demonstrated responsible action in regard to his debts. She stated that Applicant had been steadily employed for 19 years and that he had not provided specifics regarding his family's medical problems. She stated that he did not provide enough evidence to show that his problems are under control or that he made good-faith efforts to resolve his problems. Moreover, she stated that he did not provide documented proof of a basis to dispute his debts. In the whole-person analysis, the Judge cited to evidence that Applicant became delinquent on his mortgage payments despite a 2009 bankruptcy discharge. She reiterated that he had failed to file his tax returns.

Discussion

Applicant states that he was not familiar with the proceedings that were applied in his case. He states that the Department Counsel spoke with him prior to the hearing, which may have been a conflict of interest. He did not elaborate on what was said. To the extent that this is an assertion of error, it fails for lack of specificity. *See, e.g.*, ISCR Case No. 14-05920 at 3 (App. Bd. Jan. 8, 2016). He also states that his wife was there to speak on his behalf but was only allowed to answer a few questions. We note that Applicant's wife did provide information to the Judge concerning the mortgage debt. Tr. at 30. We also note that Department Counsel advised Applicant that he could consult with his wife before answering questions. Tr. at 56. At the end of the hearing, the Judge asked Applicant if he had anything further to provide, and Applicant replied that he did not. Tr. at 76. Applicant has not specified what else his wife might have stated to the Judge beyond what was already in the record. Accordingly, this assignment of error also fails for lack of specificity.

Applicant notes that, upon Department Counsel motion, the Judge amended the SOR to include an allegation about Applicant's tax returns. He contends that he did not know he could

object. In point of fact, Applicant received detailed guidance from the Chief Administrative Judge that explained the procedures that would apply during the hearing, including his right to object to proffered evidence. Pre-hearing Guidance at 3. In addition, the Judge explained the applicable procedures, including objections, at the beginning of the hearing, and advised Applicant that if he became confused about something at any time to speak up and she would provide further guidance. Applicant stated that he understood the Judge's explanations. Tr. at 7-8. Again, before ruling on the admissibility of a Government exhibit, the Judge asked Applicant if he objected to the document, and Applicant stated that he did not. Tr. at 17. Finally, before ruling on Department Counsel's motion to amend, the Judge asked Applicant if he objected to the additional allegation, and he replied that he did not. Tr. at 74. Applicant's argument that he did not know he could lodge objections is without merit. Considering the record as a whole, Applicant was provided with sufficient guidance as to the nature of the proceedings so as to enable him to present his case for mitigation. Applicant was not denied due process.

The balance of Applicant's brief recites his favorable evidence, addressing his problems with his delinquent mortgage, his medical bills, and his effort to resolve debts. He stated that the Judge considered matters that were over five years old, which he believes should not cast doubt on his current trustworthiness. On this last point, unresolved debts, such as those at issue in this case, are a continuing course of conduct. *See, e.g.*, ISCR Case No. 11-02512 at 2, note 1 (App. Bd. Aug. 14, 2012). That they may have originated in the past, or are due to circumstances that occurred years before, does not in and of itself deprive them of security significance. Applicant's argument is not sufficient to show that the Judge failed to consider all of the record evidence or that she failed to weigh the evidence in a reasonable manner. *See, e.g.*, ISCR Case No. 14-06093 at 3 (App. Bd. Dec. 4, 2015).

The Judge examined the relevant data 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, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information 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: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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