

KEYWORD: Guideline F

DIGEST: The Judge made detailed findings about Applicant's circumstances and discussed them appropriately in his Analysis. Adverse decision affirmed.

CASENO: 14-01243.a1

DATE: 6/18/2015

DATE: June 18, 2015

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In Re:)	
)	
-----)	ISCR Case No. 14-01243
)	
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 30, 2014, 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 3, 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 issue on appeal: 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

Applicant has been employed at her current job since September 2011. She previously held a clearance in 2004. She was continuously employed from 2003 until early 2011, when she was laid off due to failure to successfully complete a job-required examination. Her severance package consisted of her salary paid to her during her period of unemployment.

In 1999, Applicant was discharged in Chapter 7 bankruptcy, which relieved her of about \$22,000 in debt. Applicant’s SOR alleges 22 delinquent debts, one of which was withdrawn as a duplicate of another. She also established that she had no remaining liability on a 2007 home foreclosure. Applicant’s debts consist mainly of medical expenses, with other allegations pertaining to a credit card, a utility bill, an educational loan, etc. The vast majority of Applicant’s debts are worth less than \$300 each. In her security clearance application, Applicant listed three of her debts, stating that they originated in 2006 to 2008. She stated that she would investigate her debts and begin payments. In her clearance interview, Applicant also discussed her debts. However, she did not begin to address them until she received the SOR.

In July 2014, Applicant paid several of her debts. She consolidated three debts in a payment plan whereby she would pay \$125 a month beginning in August 2014. That same month, she established payment plans for some other debts as well. Applicant’s bankruptcy was due to her contemporaneous divorce. At her parents’ request, she purchased their house but was unable to make payments, resulting in foreclosure. Her divorce left her a single mother. In addition, she began to experience medical problems. She had other delinquent accounts that were not addressed in the SOR. Applicant has received no financial or credit counseling. She presented no budget nor character/work references.

The Judge’s Analysis

Concluding that Applicant’s delinquent debts raised Guideline F security concerns, the Judge examined her circumstances in light of her burden of persuasion as to mitigation. In finding that she had not met that burden, he cited to what he viewed as a lack of responsible action in regard to her debts. He also noted that Applicant did not undertake any action to resolve her debts until after she

had received the SOR. He also concluded that, despite Applicant's belated efforts to pay her debts, she has yet to demonstrate that she can live within her means.

Discussion

Applicant contends that the Judge did not consider all of the evidence in the record, citing to evidence that she had resolved a number of her debts. She also argues that the Judge did not take into account her trustworthiness and honesty, as reflected in her testimony. The Judge made detailed findings about Applicant's circumstances and discussed them appropriately in his Analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Neither has she shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-01509 at 2 (App. Bd. Jan. 29, 2015). To the extent that Applicant's argument contains a challenge to the Judge's evaluation of her credibility, we are required to give deference to a Judge's credibility determination. Directive ¶ E3.1.32.1. Applicant cites to some Hearing Office cases, to which we give due consideration. However, they are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 14-03754 at 2 (App. Bd. Mar. 19, 2015).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. Timing of debt payments is relevant in evaluating an applicant's case for mitigation. *See, e.g.*, ISCR Case No. 14-00279 at 3 (App. Bd. Jan. 23, 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."

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