

KEYWORD: Guideline F

DIGEST: The Judge's error about the total amount of debt was ultimately harmless in that his overall conclusion would have been the same had he not made the error. Adverse decision affirmed.

CASENO: 15-01184.a1

DATE: 12/24/2015

DATE: December 24, 2015

In Re:)
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-----) ISCR Case No. 15-01184
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Applicant for Security Clearance)
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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 March 5, 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 October 16, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Thomas M. Crean 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 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

Applicant has been employed by a Defense contractor for three years. He is studying for a master’s degree. Applicant served in the National Guard for about seven years and in the Inactive Reserves for two. He was unemployed from December 2010 until November 2011. He is married, and the household includes three children of his wife’s and his own child from a previous marriage. Two of the children have medical and developmental issues. Applicant’s net monthly income is \$4,100, with a remainder of \$410 after expenses.

Applicant experienced financial problems starting in 2009, due to his wife having undergone two surgical procedures with a consequent inability to work. Their children also had medical problems requiring frequent doctor’s visits. In about 2006, Applicant’s employer switched to a health savings plan, which increased employees’ out-of-pocket expenses for medical treatment. Additionally, Applicant’s family did not have health insurance during his unemployment. The family’s medical bills became delinquent because Applicant prioritized their debts, focusing on providing for their children and paying their mortgage.

In addition to medical debts, Applicant experienced tax problems. Taxes were not withheld from the commissions Applicant’s wife earned from her employment. The couple filed their returns as “married filing separately.” Decision at 3. Applicant’s wife did not file from 2005 until 2009. Federal and state tax authorities placed liens on the family’s property. Applicant’s wife states that she is responsible for the tax liens as they arose from her employment. She is currently attending school, paying tuition through student loans. These loans are currently in forbearance. Applicant is a co-signer on student loans for his children.

Applicant filed for Chapter 13 bankruptcy protection in August 2014. He admitted this allegation in his response to the SOR.¹ Applicant’s liabilities were nearly \$540,000 and his assets were just under \$200,000. At the hearing, Applicant disputed the amount of debt, contending that the true amount was a little over \$200,000. In addition, Applicant submitted a document to the effect that he is responsible for only a limited part of the debts, with much of the debt belonging to his wife. The Judge suggested that Applicant might want to talk with his bankruptcy attorney after

¹The SOR contains only one allegation, the bankruptcy filing.

the hearing and obtain a statement regarding the true amount of Applicant's debts. After the hearing, Applicant submitted a letter from his bankruptcy attorney. The letter stated that the Judge had confirmed the payment plan, which will pay all secured debts and mortgage arrears. The secured debts include about \$2,500 of the nearly \$89,000 tax lien. The remainder will be treated as unsecured debt. The Judge found, however, the tax debt will not be discharged by bankruptcy.

The attorney also stated that a second mortgage will be treated as an unsecured debt. The unsecured creditors will receive 1% of the amounts owed to them and the remainder will be discharged. The attorney did not state that the amount of Applicant's debts had changed. The amount stated in the SOR, \$540,000, is accurate.

The Judge found that Applicant is responsible for a majority of the debts listed in the bankruptcy documents. He noted that, although his wife filed separately, he lived in the household and benefitted from her income. He also noted that the medical debts were incurred for members of the family and that Applicant was a co-signer on his children's student loans.

Applicant is considered an exceptional employee who has excellent rapport with leaders in the organization. His performance appraisals show that he has met or exceeded his goals.

The Judge's Analysis

The Judge stated that Applicant's delinquent debts were incurred over a significant period of time and have not been resolved. Moreover, although some of them were due to circumstances outside Applicant's control, others were not. He presented no evidence of actions taken to resolve his debts except the filing of a bankruptcy petition in 2014. While this is a legitimate means of resolving debts, Applicant has now shown responsible action, given the facts in the case. He stated that Applicant was aware of his delinquent debts since November 2012, when he was interviewed for his clearance. The first action he took was to file for bankruptcy in August 2014, just before he received the SOR. He stated that the limited payments made under the bankruptcy plan are not sufficient to establish a meaningful track record of debt reform. He stated that "there is ample evidence of irresponsible behavior, poor judgment, and lack of financial reliability." *Id.* at 8. In the whole-person analysis, the Judge cited to Applicant's good duty performance and his military service. However, he concluded that Applicant had not acted reasonably or responsibly in regard to his debts.

Discussion

Applicant argues that the Judge erred in some of his findings. For example, he draws our attention to the finding that the tax debts would not be discharged in bankruptcy, citing to the letter from his attorney that, he contends, asserts the contrary. He also challenges the Judge's finding about the total amount of the debts at issue here. We examine a Judge's findings to see if 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.

Concerning the tax debt, the letter states, in pertinent part: “[T]he plan proposes to pay only the secured portion of \$2,544.52. The remaining amount will be treated just like other unsecured creditors. *Therefore, most of this \$88,839.62 will be discharged upon the successful completion of the case.*” Applicant Exhibit J, Letter dated August 4, 2015 (emphasis added). Insofar as the challenged finding was apparently a description of this document’s contents, it is erroneous. However, the Judge’s decision relied for the most part on the amount of Applicant’s debt, the relative recency of his bankruptcy filing, the absence of a meaningful track record of debt payment or reduction, and evidence to the effect that much of the debt was due to circumstances within Applicant’s control. Therefore, even if the Judge had not made this error, his overall conclusion would most likely have been the same. This error is harmless. *See, e.g.*, ISCR Case No. 14-03601 at 3 (App. Bd. Jul. 1, 2015). The finding about the total amount of debt is supported by Applicant’s response to the SOR and by the bankruptcy documents included in the record as Government Exhibit 3. We find no harmful error in the Judge’s material findings of security concern.² The findings satisfy the requirements of the Directive.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The Judge stated that Applicant’s bankruptcy consisted basically of a plan to pay off debts in the future. He concluded that Applicant had not demonstrated a track record of debt repayment, which was consistent with the record that was before him. Promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. *See, e.g.*, ISCR Case No. 14-04565 at 2 (App. Bd. Sep. 18, 2015). 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

²Applicant also states that the Judge misspelled the name of Applicant’s wife, who had served as a personal representative at the hearing. He acknowledges that this error is minor but contends that it shows that the Judge erred. We note this error but do not find it to have exerted any influence on the case.

Administrative Judge
Member, Appeal Board

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