

KEYWORD: Guideline F

DIGEST: Applicant’s delinquent debts in the SOR total over \$700,000. Adverse decision affirmed.

CASENO: 15-03072.a1

DATE: 06/05/2017

DATE: June 5, 2017

In Re: ----- Applicant for Security Clearance))))))))	ISCR Case No. 15-03072
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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 November 4, 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 decision on the written record. On March 8, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Martin H. Mogul 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

The SOR lists 11 allegations, including failure to file Federal and state tax returns, Federal tax liens, and other overdue debts. The delinquent debts in the SOR total over \$700,000. Applicant admitted ten of the SOR allegations and introduced no evidence to establish that those financial difficulties have been resolved or reduced. For the remaining allegation, a state tax debt of over \$500,000, she wrote "deny/partial" in her SOR response, noted the state listed she had no taxes due as of April 2016, but presented no evidence establishing the debt has been resolved or reduced.

Applicant was unemployed from about August 2008 to April 2009. In her response to Department Counsel's File of Relevant Material (FORM), she wrote that her Federal tax debt was the result of a Ponzi scheme and the IRS suspended collection of that debt pending the outcome of a court case involving the alleged perpetrator. She indicated she was a victim and witness in that case. She asserted that she and her accountant are confident that the delinquency will eventually be eliminated. No evidence was introduced to establish this debt has been resolved or reduced.

The Judge's Analysis

Applicant presented some evidence that her tax debt to the IRS may be settled in a lawsuit, but that matter has yet to be resolved. Even if that lawsuit resolved the alleged Federal tax debt, it is unclear whether it would also resolve the Federal tax liens. The record reflects several other debts for which no evidence of resolution or reduction has been presented. While a period of unemployment may have caused Applicant's financial difficulties, she has not established that she acted responsibly to resolve or reduce her non-Federal delinquent debts. Evidence was not introduced to show Applicant will be able to pay off her past debts or keep up to date on her current debts.

Discussion

Applicant argues that the Judge did not weigh and consider all relevant evidence. She cites to such things as her unemployment and being a victim of a Ponzi scheme. However, the Judge made findings about those matters. Applicant's arguments are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015). We give due consideration to the Hearing Office case that Applicant cited, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge's decision. *Id.* Additionally, the Judge complied with the requirements of the Directive in his whole-person analysis by considering the totality of the evidence in reaching his decision.

The Judge examined the relevant evidence 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: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board

Signed: James F. Duffy

James F. Duffy

Administrative Judge

Member, Appeal Board