

KEYWORD: Guideline F

DIGEST: Applicant has not rebutted the presumption that the Judge considered all of the record evidence. Neither has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 15-04266.a1

DATE: 06/02/2017

DATE: June 2, 2017

In Re:)	
)	
-----)	ISCR Case No. 15-04266
)	
Applicant for Security Clearance)	

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 January 4, 2016, 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 7, 2017, after considering the record, 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 issue on appeal: whether the Judge weighed the evidence in

a manner that was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact and Analysis

Applicant is a 49-year-old employee of a Federal contractor. He filed Chapter 7 bankruptcy in 2011, and his debts were discharged in 2011. A Federal tax lien for about \$35,000 was filed against him in 2011. He entered into an agreement with the Internal Revenue Service to make monthly payments of \$370 and have his future tax refunds applied to the debt. In his response to Department Counsel's File of Relevant Material (FORM), he provided documentation that he satisfied the Federal tax lien. A state tax lien was filed against him in 2012. He entered into an agreement with the state to make monthly payments and provided documents showing he has complied with the agreement and had one remaining payment. The Judge found in favor of Applicant on the Federal and state tax liens and against him on the bankruptcy allegation.

Applicant attributed his bankruptcy to two real estate investments that he was unable to maintain due to a decline in the market. He stopped making payment on the mortgages so he could short sale the properties. The record contains no specific information about the properties, including why he could not pay the mortgages. He did not provide specific information about his finances at that time, but indicated that he was current on all of his accounts and was advised by an attorney to include them in the bankruptcy. Bankruptcy records reflect he had over \$600,000 of unsecured nonpriority claims, which included numerous credit cards, a boat loan, two timeshares, unemployment compensation, utilities, and many other debts. It appears all of these accounts were discharged. There is insufficient evidence to determine the reason why these accounts were discharged if they were not delinquent or why he did not reaffirm them. He failed to provide sufficient information to explain why he noted on his security clearance application that his bankruptcy was for \$183,000 when documents indicate a much higher amount.

While the downturn in the real estate market and his business were conditions beyond his control, Applicant did not provide sufficient evidence to conclude he acted responsibly regarding his debts. The Judge noted she was unable to conclude that including debts that were not delinquent in the bankruptcy was a responsible method of managing debts. No evidence was provided regarding Applicant's current finances, income, expenses, or business. Insufficient evidence was present to conclude his current finances are under control.

Discussion

Applicant's appeal brief includes information that was not presented to the Judge for consideration. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant essentially contends that the Judge erred in her application of the mitigating conditions. In doing so, he argues the bankruptcy occurred five years ago, he never filed bankruptcy previously, the chain of events that precipitated the bankruptcy were beyond his control and unlikely to recur, and he is currently living within his means. The Judge made finding about these matters and discussed them in her analysis. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. Neither has he shown that the Judge weighed the evidence

in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 13-00502 at 3 (App. Bd. Mar. 7, 2017). The Judge complied with the requirements of the Directive in that she considered Applicant’s security concerns in light of the entirety of the evidence.

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