

KEYWORD: Guideline F; Guideline E

DIGEST: We find no reason to disturb the Judge's conclusion that Applicant had not satisfied the mitigating conditions. Among other things, relying upon an option such as bankruptcy is not the same as actually paying debts when due. Adverse decision affirmed.

CASENO: 15-06707.a1

DATE: 08/15/2017

DATE: August 15, 2017

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In Re: )	
)	
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)	
)	
Applicant for Security Clearance )	
_____ )	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Andre F. Regard, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 26, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 30, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Philip S. Howe 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 works for a Defense contractor. He has held a security clearance since 2006. He also works at a part-time job to earn extra money. Applicant's wife had surgery in 2006, resulting in her inability to work. This decreased the family income. Applicant's wife was required to repay the state \$10,000 for an apparent unemployment compensation overpayment. This debt has been resolved. Applicant has spent funds for travel, equipment, etc., in support of his children's athletic activities. In late 2003, Applicant filed for Chapter 13 bankruptcy protection, which was subsequently converted to Chapter 7. He was discharged in bankruptcy in early 2005. Applicant filed again for Chapter 13 bankruptcy in late 2016 and is making weekly payments of \$111 to the bankruptcy trustee. He refers to this as his repayment plan.

Applicant's SOR lists a number of delinquent debts, for utility services, medical expenses, automobile loans, cable television, etc. Applicant demonstrated that he had resolved some of these debts, and others were included in the Chapter 13 bankruptcy plan. This plan also includes debts not listed in the SOR.

In addition, Applicant's SOR alleges that he failed to file his Federal and state income tax returns from 2007 to 2012. He owes the Federal Government over \$20,000, and he began an installment plan in January 2013. He did not produce a copy of this exhibit. In addition, he owes his state about \$600 for unpaid taxes, which he claims that he paid in 2015. Applicant believed that when he filed Federal returns his state returns were filed automatically. "He has now learned that he has to file tax returns with the IRS and his home state tax authorities separately." Decision at 4.

Applicant enrolled in a credit counseling program, but he discontinued it when he decided to file for bankruptcy. He received counseling as part of his bankruptcy proceeding.

### **The Judge's Analysis**

The Judge resolved some of Applicant's debts in his favor, as he also did with one of the Guideline E allegations. However, he also entered adverse findings under both Guidelines. Regarding Applicant's finances, the Judge concluded that the problems were not under control. He stated that Applicant did not demonstrate a good-faith effort to pay his debts, relying instead upon bankruptcy. He also cited to Applicant's ongoing tax debt. Applicant's failure to have filed his tax returns was cross alleged under Guideline E, for which the Judge found no mitigation.

### **Discussion**

Applicant contends that the Judge did not properly apply the mitigating conditions. He cites to each of the SOR debts, arguing that some had been paid and that others, including Applicant's delinquent tax obligations, were covered by the Chapter 13 bankruptcy plan. He also states that Applicant has filed his tax returns. Some of the matters addressed in the Appeal Brief are from outside the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record. Neither are they 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. 13-00502 at 3 (App. Bd. Mar. 7, 2017). We find no reason to disturb the Judge's conclusion that Applicant had not satisfied the mitigating conditions. Among other things, relying upon an option such as bankruptcy is not the same as actually paying debts when due. *See* ISCR Case No.12-01664 at 3 (App. Bd. Jan. 17, 2014). Moreover, failure to file tax returns and pay tax obligations suggests that an applicant has a problem with complying with well-established government rules and regulations. Voluntary compliance with such rules and regulations is essential for protecting classified information. *See, e.g.*, ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016).

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, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility 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: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board