

KEYWORD: Guideline F

DIGEST: Applicant cites to the bankruptcy code in support of his challenge to the Judge’s analysis. However, even if Applicant is correct as a matter of law that all of the SOR debts were covered, it would not compel a favorable result. Furthermore, as Department Counsel notes, Applicant has not explained the circumstances in which the delinquencies arose. Although debts may have been paid or discharged in bankruptcy, a Judge may still consider the underlying circumstances for what they may reveal about an applicant’s judgment and reliability. Adverse decision affirmed.

CASENO: 16-02246.a1

DATE: 12/8/2017

DATE: December 8, 2017

In Re:)	
)	
-----)	ISCR Case No. 16-02246
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Kenneth M. Roberts Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 31, 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 August 11, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley 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 is separated from his wife. He has no children from the marriage. He separated from the U.S. military in 2010 and has worked for his current employer since 2015. His SOR alleges over \$33,000 in delinquent debt. Without otherwise addressing these financial delinquencies, Applicant filed for Chapter 7 bankruptcy protection. His debts were discharged in late 2016. The Judge stated that it is unclear whether the debts that were not listed in his schedule of non-priority claims were discharged. He stated that more documentation is needed regarding these debts.

Applicant filed his 2014 Federal income tax return late. In addition, he owed over \$1,700 in back taxes. He entered into an installment agreement whereby he would pay \$100 per month in resolution of his tax delinquency. He provided no documentation to show that he was adhering to the terms of this plan.

Applicant's monthly income is about \$3,600. After expenses he has \$6.00 left over. He did not present more recent information about his income than was included in his bankruptcy petition. Applicant provided no evidence of financial counseling or of the creation of a budget to assist him in managing his finances.

The Judge's Analysis

The Judge resolved some of Applicant's SOR debts, as well as his late tax return, in his favor. However, for other debts, including his delinquent income tax obligation, the Judge entered adverse findings. He stated that there is no evidence that Applicant's financial problems were caused by circumstances outside his control. Moreover, he reiterated his finding that Applicant did not provide evidence of compliance with his tax repayment plan. Though noting Applicant's bankruptcy discharge, he stated that Applicant's debts go back many years and that the record does not contain evidence of a reasonable basis for these debts. The Judge stated that Applicant's financial and tax problems reflect poorly upon his judgment and reliability.

Discussion

Applicant contends that all of his delinquent debts were discharged through bankruptcy. He cites to the bankruptcy code in support of his challenge to the Judge's analysis.¹ However, even if Applicant is correct as a matter of law that all of the SOR debts were covered, it would not compel

¹The record contains Applicant's discharge order, which states that not all debts are necessarily covered by a bankruptcy discharge. Item 1, Discharge Order, included in Answer to SOR.

a favorable result. Furthermore, as Department Counsel notes (Reply Brief, p. 9), Applicant has not explained the circumstances in which the delinquencies arose. Although debts may have been paid or discharged in bankruptcy, a Judge may still consider the underlying circumstances for what they may reveal about an applicant's judgment and reliability. *See, e.g.*, ISCR Case No. 14-02394 at 3-4 (App. Bd. Aug. 17, 2015). By the same token, even if debts have been resolved or discharged, a Judge may consider any paucity of mitigating evidence in determining whether the applicant had met his or her burden of persuasion. Here, for example, Applicant did not adequately explain what efforts he took to resolve the debts short of bankruptcy. We resolve this assignment of error adversely to Applicant.

Applicant's brief includes documents from outside the record and that post-date the Judge's decision, which we cannot consider. Directive ¶ E3.1.29. Applicant believes that he has mitigated concerns arising from his tax delinquency. However, the Judge's comment that the record contains no evidence to excuse this failure is supportable. In a DOHA proceeding, it is the applicant's job to present evidence in mitigation of the concerns raised in the SOR. Directive ¶ E3.1.15. After considering the record as a whole, we find no reason to disturb the Judge's conclusion that Applicant had failed to meet his burden of persuasion.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. A person who fails to comply with legal obligations, such as filing and/or paying taxes when due, does not exhibit the good judgment and reliability expected of those with access to classified information. *See, e.g.*, ISCR Case No. 15-06707 at 3 (App. Bd. Aug. 15, 2017). 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: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board