

KEYWORD: Guideline E; Guideline F

DIGEST: A creditor’s decision to charge off a debt for accounting purposes does not affect a debtor’s obligations to the creditor. A Judge could reasonably conclude charged-off debts remain ongoing financial problems. If Applicant had proof of resolution of alleged debts, he was obligated to present such evidence to the Judge. The doctrine of ineffective assistance of counsel does not apply in DOHA proceedings. Adverse decision affirmed.

CASENO: 15-07941.a1

DATE: 11/29/2018

DATE: November 29, 2018

In Re:)	
_____)	
-----)	
)	ISCR Case No. 15-07941
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 October 13, 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 August 31, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Stephanie C. Hess 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 decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline E have not been raised as an issue on appeal. Consistent with the following, we affirm.

The Judge's Pertinent Findings of Fact and Analysis

Applicant works for a defense contractor. He has served honorably in the military, which included multiple deployments to war zones. The SOR alleged that he had 11 debts totaling about \$36,000. He admitted ten of those debts. He attributed his financial difficulties to periods of unemployment and underemployment. He also opened a business in 2009 that failed in 2016. In his 2014 security clearance application, Applicant listed a number of his delinquent debts and stated he was currently in the process of filing Chapter 13 bankruptcy. In his 2016 SOR Answer, he again indicated he would resolve the debts through Chapter 13, bankruptcy. At the hearing, he indicated that he decided not to file bankruptcy because he learned taking such action could not protect his marital home from foreclosure and could potentially have an impact on his security clearance eligibility.

Applicant's delinquent debts include a deficiency balance on a repossessed vehicle of over \$14,000, three charged-off credit card debts totaling over \$11,000, and a charged-off delinquent electronic payment of about \$550. Those debts remain unresolved. He paid two of the delinquent debts totaling less than a \$1,000 and entered into payment plans or settlement agreements for other debts. In 2017, he received a \$20,000 raise and now earns about \$90,000 annually. He also receives annual disability compensation benefits of about \$12,000.

Despite having received the SOR more than a year earlier, Applicant did not contact the creditors until just before the hearing. He did not have a clear understanding of his accounts. He has the prerogative to change his mind about filing bankruptcy, but such a change does not justify a failure to address his delinquent debts. Based on Applicant's recent repayment agreements, it is too soon to conclude that he has developed a track record of repayments. Although he encountered conditions beyond his control, he has not acted responsibly under the circumstances and his delinquent accounts primarily remain unresolved.

Discussion

Applicant's brief includes matters that are not contained in the record. For example, he stated that he has paid an attorney to file Chapter 13 bankruptcy and that the delinquency on the

repossessed vehicle and another debt will be resolved through that bankruptcy. He also provided documents in his appeal brief showing he paid some of the delinquent debts after the record of the proceeding closed. We cannot consider new evidence on appeal. Directive E3.1.29.

Applicant contends that he did not owe credit card debts from specific creditors because the accounts were paid or charged off several years ago and that his attorney did not present accurate information about the accounts even though he provided that information to the attorney. These arguments are not persuasive. First, a creditor's decision to charge off a debt for accounting purposes does not affect a debtor's obligations to the creditor. A Judge could reasonably conclude charged-off debts remain ongoing financial problems. *See, e.g.*, ISCR Case No. 17-00683 at 2 (App. Bd. Oct. 19, 2018). Second, if Applicant had proof of resolution of alleged debts, he was obligated to present such evidence to the Judge. Directive ¶ E3.1.15. Third, the doctrine of ineffective assistance of counsel does not apply in DOHA proceedings. *See, e.g.*, ISCR Case No. 17-03852 at 4 (App. Bd. Oct. 31, 2018). Applicant's arguments do not establish that the Judge committed any harmful error.

Applicant argues the adverse decision has resulted in the termination of his job and damaged his career. The Directive does not allow us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 17-01492 at 2 (App. Bd. Apr. 30, 2018). He also contends that he was told his decision would be issued in mid-January 2018, but it was issued until much later. "Had the decision reached me sooner, I would have made more economical choices." Appeal Brief at 2. Applicant's security clearance hearing was held in November 2017, and he knew a decision on his security clearance eligibility was pending. His economic choices are solely his responsibility and do not warrant any type of relief in this proceeding.

Applicant further argues that the Judge did not take into consideration his military service and points out that he has held a security clearance for over 30 years without ever being disciplined or cited for any misbehavior. His 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. 17-02488 at 3 (App. Bd. Aug. 30, 2018). Although an absence of prior security violations is a matter that a Judge should consider, along with all the other evidence in the record, it does not preclude a Judge from concluding that an applicant's circumstances present security concerns that the applicant failed to mitigate. The Government does not have to wait until an applicant has compromised or mishandled classified information before it can deny the applicant a clearance. Even those with good prior records can encounter circumstances in which their judgment and reliability might be compromised. *See, e.g.*, ISCR Case No. 14-04648 at 3 (App. Bd. Sep. 9, 2015).

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: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board