

KEYWORD: Guideline F

DIGEST: If Applicant believed that there was additional information that the Judge required, it was his duty to present it. Neither Judges nor Department Counsel are authorized to serve as investigators in a DOHA proceeding. Adverse decision affirmed.

CASENO: 15-07726.a1

DATE: 02/28/2018

DATE: February 28, 2018

In Re:)	
)	
-----)	ISCR Case No. 15-07726
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Sheila Durant, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 25, 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 hearing. On November 14, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Thomas M. Crean denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether he was denied due process and 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 married with two children. He had another child that passed away. He has been employed by a Defense contractor for more than 20 years and has held clearance eligibility for the entire time. Applicant earns about \$120,000 a year and his wife earns about \$60,000. Applicant sometimes receives overtime pay. After expenses, Applicant has about \$2,600 in discretionary funds.

Applicant’s SOR lists numerous financial problems, including two Chapter 13 bankruptcy filings. Applicant’s first such petition was dismissed. He filed another one over a year later, and it is still pending. His SOR also lists an overdue mortgage, several traffic tickets, and two collection accounts. Applicant admitted that he was not a good money manager. In addition, his wife experienced unemployment, which affected their financial condition.

Applicant’s mortgage lender initiated foreclosure proceedings due to Applicant having failed to make the required payments. Applicant filed for bankruptcy protection in order to protect his house, and he has demonstrated that his mortgage is now current. In addition to the mortgage arrears, Applicant’s bankruptcy petition includes tax liens resulting from his having claimed more exemptions than he was authorized. At the hearing, Applicant admitted that he had debts that “he has not looked at, thought about, contracted creditors, or arranged to pay.” Decision at 4. Although he promised to resolve his debts, he did not present any evidence showing that he had done so.

The Judge’s Analysis

The Judge concluded that Applicant’s debts are numerous, recent, and that they were not incurred under unusual circumstances. Though noting Applicant’s pending bankruptcy proceeding, he found that many of the SOR debts are not included therein. The Judge cited to evidence that Applicant did not manage his finances responsibly. Applicant has been gainfully employed for over 20 years and has significant discretionary funds after expenses. Nevertheless, Applicant has not shown any attempt to resolve his debts other than those included in his bankruptcy. The Judge concluded that Applicant did not provide sufficient documentation to show that he is paying his debts, negotiating with creditors, disputing debts, etc. The Judge concluded that a lack of responsible action is a strong indicator that Applicant may fail to safeguard classified information.

Discussion

Applicant has raised an issue of due process. In doing so, he and Department Counsel in his Reply Brief present information that is not contained in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. However, we will consider new evidence regarding such threshold issues as jurisdiction or due process. *See, e.g.*, ISCR Case No.16-01129 at 2 (App. Bd. Aug 7, 2017).

Applicant contends that he was not apprised that his case would be adjudicated under the Guidelines promulgated on June 8, 2017. However, with his Reply Brief Department Counsel has submitted documents showing that Applicant was notified that the most recent Guidelines would apply to his case, and he was given a copy of these Guidelines as well. Applicant was not denied adequate notice of the Guidelines that would apply to his case.

Applicant argues that the Judge did not properly evaluate his case for mitigation. For example, he contends that to qualify for bankruptcy protection one must pass a financial management course. He cites to the death of his child, noting the profound effect that this tragedy had upon him, and he states that he fully disclosed the extent of his debts. Applicant contends that the traffic tickets in question were in fact included in his bankruptcy petition, which the Judge or Department Counsel could have discovered by calling the bankruptcy trustee. He also contends that he sent the Judge evidence that those tickets not covered by bankruptcy had been paid.

The Judge made extensive findings about Applicant's circumstances. He noted especially Applicant's stated reasons for having fallen into financial disarray. The Judge also made a finding that Applicant had suffered the death of a child. However, at the Hearing level Applicant did not cite to his undoubted grief over this tragedy as a specific cause of his financial problems. Rather, he admitted that his problems resulted from his own poor financial management and his wife's unemployment. If Applicant believed that there was additional information that the Judge required, it was his duty to present it. Neither Judges nor Department Counsel are authorized to serve as investigators in a DOHA proceeding. *See, e.g.*, ISCR Case No. 15-05310 at 2 (App. Bd. Dec. 1, 2017). Regarding the traffic tickets, Applicant's bankruptcy petition, which is included as a Government Exhibit, lists all but two of the tickets as unsecured nonpriority claims.¹ To the extent that the Judge concluded that Applicant had done nothing at all about these tickets, he erred. However, even if an applicant has actually paid his debts, or they have been removed through a legal process such as bankruptcy, a Judge may still consider the circumstances underlying the debts for what they may reveal about the applicant's eligibility for a clearance. *See, e.g.*, ISCR Case No. 16-02246 at 2 (App. Bd. Dec. 8, 2017). The Judge devoted much of his analysis to a discussion of Applicant's poor financial management and to his significant after-expenses monthly income. Therefore, even if the Judge had found that the vast majority of Applicant's tickets were included in his bankruptcy petition he most likely would still have issued an adverse decision.

¹Applicant's brief includes documents from his state's Department of Motor Vehicles showing that he had paid certain traffic tickets. However, the ticket numbers do not match those of the remaining two SOR allegations.

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